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REPORT
OF
THE CASE

BETWEEN THE
REV. CAVE JONES,
AND THE
RECTOR AND INHABITANTS

OF THE CITY OF NEW-YORK IN COMMUNION OF THE PRO-
TESTANT EPISCOPAL CHURCH IN THE STATE OF
NEW-YORK.

AS THE SAME WAS ARGUED

*Before the five Judges of the Supreme Court of the state of
New-York—Arbitrators to whom the difference be-
tween the parties were referred by a rule of the
said Court.*

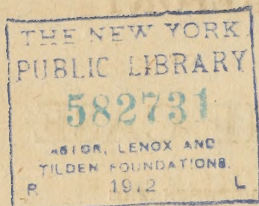
BY MATTHEW L. DAVIS.

NEW-YORK:

PRINTED BY WILLIAM A. DAVIS.

1813.

56



District of New-York, ss.

BE IT REMEMBERED, that on the nineteenth day of November, in the thirty-eighth year of the Independence of the United States of America, MATTHEW L. DAVIS, of the said District, has deposited in this office the title of a Book, the right whereof he claims as proprietor, in the words and figures following, to wit:

Report of the Case between the Rev. Cave Jones and the Rector and Inhabitants of the city of New-York in communion of the Protestant Episcopal Church in the state of New-York—as the same was argued before the five Judges of the Supreme Court of the state of New-York. Arbitrators to whom the differences between the parties were referred by a rule of the said Court. By Matthew L. Davis.

In conformity to the Act of the Congress of the United States, entitled “An Act for the encouragement of Learning, by securing the copies of Maps, Charts, and Books to the authors and proprietors of such copies, during the time therein mentioned.” And also to an Act, entitled “an Act, supplementary to an Act, entitled an Act for the encouragement of Learning, by securing the copies of Maps, Charts, and Books to the authors and proprietors of such copies, during the times therein mentioned, and extending the benefits thereof to the arts of designing, engraving and etching historical and other prints.”

THERON RUDD,
Clerk of the New-York District.

PREFACE.

THE importance of the controversy between the rev. Mr. Jones and the Vestry of Trinity Church, will, it is hoped, be deemed a sufficient apology for offering to the public this "*Report of the Case.*"

To episcopalians, in particular, this controversy was important: because, the interesting questions, whether a bishop could resign? and if he could, whether, in our country, such resignation must be made to the state convention, or to the house of bishops? seemed to be involved in the final decision of Mr. Jones's case.

By the construction given to the terms of submission, between the vestry of Trinity Church and the rev. Cave Jones, it appears, that the arbitrators were not compelled to give "any decision or opinion," as to the validity of the proceedings previously instituted. It was, however, generally understood and believed, that the bond was imperative; and that a decision on this point would have been one of their first acts—But the award must speak for itself. It evidently determines nothing except the question of compensation. Of the opinion of the arbitrators on the legality of those proceedings, as they have not offered their sentiments, the public are left to form deductions from the compensation allowed; which has been increased from two thousand five hundred, to seven thousand five hundred dollars. From a private and respectable source, it is stated, that their silence on this head, arose from an unwillingness to interfere with the province of the ecclesiastical authority.

To those who are unacquainted with the proceedings, previous to the reference, the bond, which is the first docu-

ment printed in this volume, will afford the necessary information.

The counsel employed by Trinity Church, have, in the course of their argument, spoken with some degree of asperity, of the meeting of episcopalians which was held at Mechanic-Hall on the evening of the 14th of January, 1812. In order that the public may judge of the characters which composed it, and be enabled to determine whether their understandings were affected "*by the fumes of the place in which they met,*"—to use the liberal and respectful language of one the counsel, it has been deemed proper to publish their proceedings. The acts of the committee appointed at that meeting, will be found detailed in the testimony of Mr. Thomas Farmar.

At a very numerous and respectable meeting of the episcopalians of the city of New-York, convened by public notice, and held at Mechanic-Hall on Tuesday evening the 14th January, 1812,

THOMAS FARMAR, Esq. Chairman.

WM. N. STUYVESANT, Esq. Sec'y.

the following resolutions were unanimously adopted.

RESOLVED, That we sincerely deplore the dissensions which disturb the religious society to which we belong; that we conceive it to be the duty of every member of that society to use his utmost efforts to restore tranquillity to the church; and that if those persons, who are most immediately concerned with the existing controversies, would bear a spirit of reconciliation, and exercise the virtues of charity, forbearance, and humility, which belong to their sacred offices; and are enjoined by the precepts of christianity, the peace of the church might be restored.

RESOLVED, That in the opinion of this meeting, the proceedings and sentence of a convocation of the right rev. bishop Moore and certain presbyters of this diocese, against the rev. Cave Jones, are illegal and unjust.

Illegal. 1st.—Because the canon under which those proceedings were instituted and that sentence was pronounced,

did not apply to his case, no controversy having existed between the vestry or congregation, and Mr. Jones; or, if any controversy did exist between them, no efforts having been made according to the canon, the dictates of humanity, and the principles of the gospel, to settle it between themselves. On the contrary, the controversy to which the vestry have assumed to become parties, was a controversy between three individuals, the rev. Dr. Hobart, and the rev. Mr. How, and Mr. Jones; and though much to be lamented, it neither demanded nor justified the proceedings on the part of the vestry which that body have seen fit to adopt.

2d. Because the members of that convocation or tribunal were not impartial judges, bishop Moore being in his capacity of rector, a member of the vestry, and as such, one of the complainants, while in his capacity of bishop, he acted as judge. And most of the presbyters having taken active parts in that controversy, and expressed decided opinions respecting it, and some of them moreover being expectants upon the bounty of the vestry.

3d. Because the rev. Mr. How, being then in the employ of the vestry, and a dependant upon their bounty, as to the amount of his salary—and upon their will, as to its duration, was permitted, contrary to law, and contrary to the sacred principles of justice, to set as judge upon his adversary, in a controversy in which he was himself a principal party, and respecting which, he had previously written and published a book loudly condemning the conduct of Mr. Jones.

4th. Because those proceedings were instituted, and that sentence pronounced, without a previous enquiry into the truth of Mr. Jones's charges against Dr. Hobart and Mr. How, or affording him an opportunity of establishing them by evidence, if true.

The sentence is unjust, because it is severe, infinitely beyond Mr. Jones's demerits, even if he were guilty of every thing of which he was accused. If it were wrong to publish his Appeal, when he thought he was injured by his colleagues; when he thought it his duty to develope what he conceived to be the character of one who was then a candidate for the highest office in the church, Dr. Hobart and Mr. How have committed similar offences, with no other plea to

extenuate their conduct, than that which Mr. Jones urges in his defence, viz: "That they thought their publications due to their characters, and the good of the church;" a sentence therefore, which in effect, deprives Mr. Jones and his family of bread; banishes him from his native city, and shuts every pulpit against him, while, without enquiry into the truth of the charges exhibited by him, Mr. How is left in the enjoyment of his living, and bishop Hobart is elevated to the highest clerical dignity, is partial and unjust.

RESOLVED, That by the original charter granted to the protestant episcopal inhabitants of this city, and by the acts of the Legislature of this state, all the inhabitants of this city, in communion with the protestant episcopal church in the state of New-York, were constituted, and now are one body politic and coporate, by the name and style of "The Rector and Inhabitants of the city of New-York in communion with the Protestant Episcopal Church in the state of New-York;" that all such inhabitants are equally entitled to express their sentiments respecting any dissensions which may arise in the church, and to adopt such measures, as in their opinions may be most conducive to its peace; that they are all equally interested in the preservation and due administration of the temporalities of the church, and have equally a right to vote at elections of the vestry, who are the trustees of those temporalities. It is, therefore, the duty of each individual possessing such a right to claim, exercise and assert it.

RESOLVED, That Thomas Farmar, Nicholas Fish, Peter Mesier, George Warner, Gold Hoyt, Benjamin Ferris, William Irving, Benjamin Mumford, David Wagstaff, Peter G. Stuyvesant, John P. Groshon, Matthew L. Davis, Dr. John Bulius, James Farquhar, Simon Schermerhorn, Peter Jay Munroe, Jacob Delamontagnie, John Pell, Thomas Ellison, John Kemp, Dr. Joseph Bailey, Thomas Hamersley, Dr. George W. Chapman, James P. Vanhorn, Jonas Humbert, Abraham R. Lawrence, and William R. Stuyvesant, be a committee to endeavour to carry the preceding resolutions into effect; and they are hereby authorized and requested to adopt all such measures as in their opinion will tend to heal the existing divisions in the church, restore peace, and prevent a repetition

of similar dissensions, and such as the good of the church, under existing circumstances, may require.

RESOLVED, That the proceedings of this meeting be published, and signed by the Chairman and Secretary.

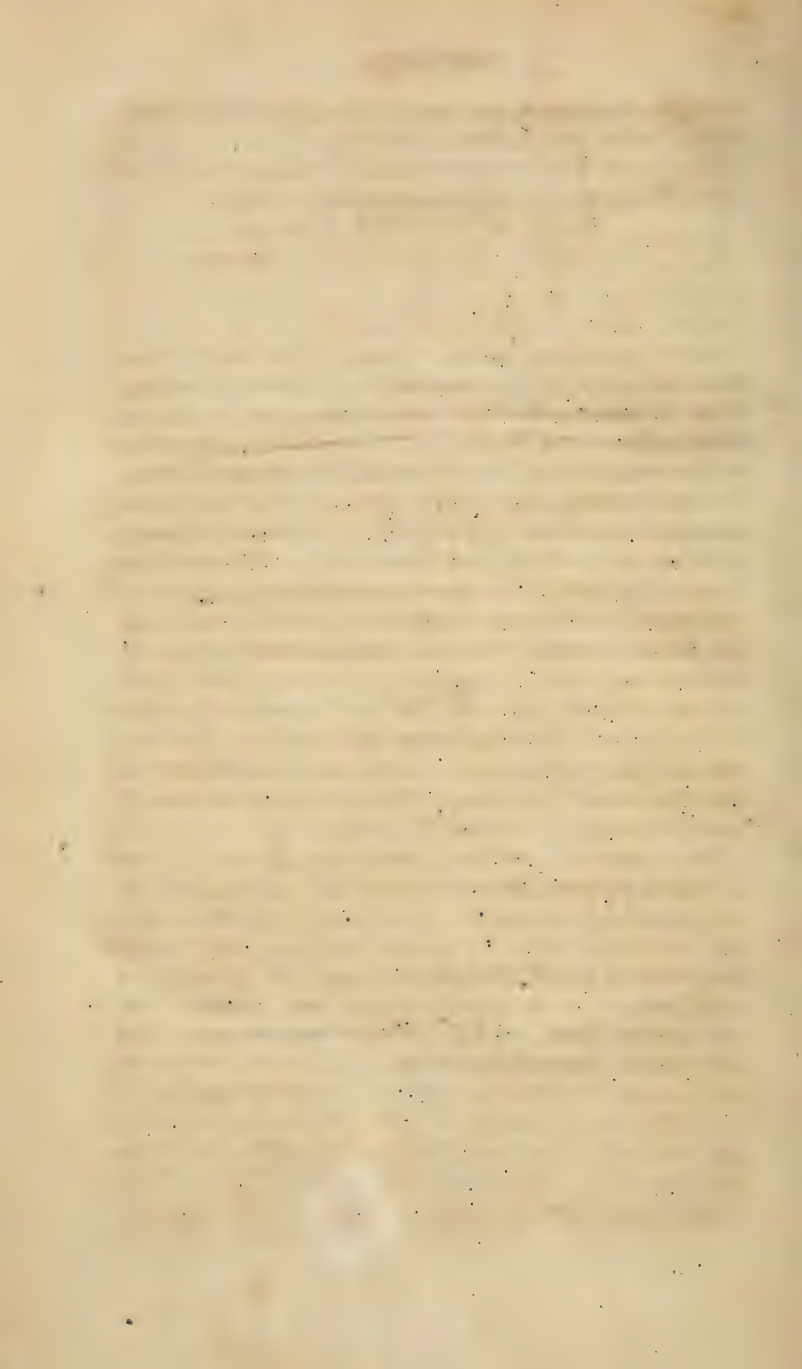
THOMAS FARMAR, Chairman.

WM. N. STUYVESANT, Secretary.

In the publication of this "*Report of the Case*," I have been influenced by no mercenary or interested feelings. From the moment that Mr. Jones was required to abandon his situation in the church, and allowed as a compensation for the sacrifice, only Two Thousand Five Hundred Dollars, I viewed the decision as marked with a species of intolerance, inconsistent with the genius of our government, and hostile to the virtues of charity and forbearance; and therefore, although I had with him no personal intimacy or intercourse, I resolved to afford him my feeble efforts in the attempt to obtain his legal rights. The same feelings, and the same motives determined me to take notes of all the proceedings before the arbitrators; and that the public may be enabled to form a just and correct judgment for themselves, this statement of facts, of documents, and of authorities, is now put into their hands. Its impartiality, I am bold to assert, will never be arraigned by any of the parties.

The arguments of counsel previous to publication, were all examined by themselves, except the speech of Mr. Ogden, who declined doing it. I am under obligations to them for their friendly aid. For myself, I claim no merit, except the merit of having laboured with zeal and industry in a cause, which, in the sincerity of my heart, I believe to be the cause of justice, without the expectation or hope of any other reward than self-approbation.

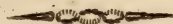
THE REPORTER.



REPORT
OF
THE CASE

BETWEEN

THE REV. CAVE JONES, &c.



NEW-YORK, MAY 5th, 1813.

THE Arbitrators in this Case all attended.

PRESENT,

Chief-Justice KENT,

The Hon. S. THOMPSON, The Hon. A. SPENCER,
The Hon. W. W. VAN NESS, The Hon. J. C. YATES.

Counsel for the Plaintiff. } C. D. Colden,
T. A. Emmott, Esqrs.

Counsel for the defendants. } D. B. Ogden,
T. L. Ogden,
J. Wells,
C. S. Riggs, Esqrs.

After some desultory conversation, THOMAS A. EMMOTT, Esq. of counsel for the plaintiff, read the bond entered into between the Rev. Cave Jones and the Corporation of Trinity Church, which bond, with the following documents and extracts, it was agreed, between the parties, "should be considered as duly proved, and that either party be at liberty to refer thereto, on the hearing before the arbitrators."

DOCUMENTS, &c.

THIS Indenture, made the fourteenth* day of July, in the year of our Lord one thousand eight hundred and twelve, between the Rector and Inhabitants of the City of New-York, in Communion of the Protestant Episcopal Church in the State of New-York, of the first part, and Cave Jones, of the said city of New-York, clerk, of the second part.

Whereas the above-named Cave Jones, being an Assistant Minister, in the employ and service of the above mentioned Rector and Inhabitants of the City of New-York, in Communion of the Protestant Episcopal Church of the State of New-York, did, on or about the first day of May, in the year of our Lord one thousand eight hundred and eleven, cause to be printed and published a certain book, or pamphlet, entitled, " A Solemn Appeal to the Church, being a plain Statement of Facts in the Matters pending between Dr. Hobart, with others, and the Author, by the Rev. Cave Jones, A. M. one of the Assistant Ministers of Trinity Church, New-York: together with an Appendix, containing a Statement of the Case of the Rev. Mr. Feltus, under his own hand." A copy of which book, or pamphlet, marked A, is to be considered as part of this instrument. And whereas, on the thirteenth day of May, in the year of our Lord last aforesaid, after the publication as aforesaid of the said book, or pamphlet, the said Cave Jones still being an Assistant Minister as aforesaid, the following proceedings were had by the said Rector and Inhabitants, viz.

" At a meeting of the Corporation of Trinity Church, in
" the city of New-York, held in the said Church on the
" 13th day of May, 1811 :

" The committee to whom it was referred at the last meeting of the Board to take into consideration a late publication of the Rev. Mr. Jones, one of the Assistant Ministers of this Church, entitled, ' A Solemn Appeal to the Church,'

* This Bond was, on the 10th day of May, extended to the first of October, 1813.

“ made a report on that subject, in the words following:
 “ The committee to whom it was referred to take into con-
 “ sideration a late publication of the Rev. Mr. Jones, entitled,
 “ A Solemn Appeal to the Church,’ have maturely reflected
 “ thereon.

“ The publication in question appearing to relate to mat-
 “ ters, the cognizance and decision of which exclusively be-
 “ long to regular tribunals, established by the canons of the
 “ Church, the committee deem it improper to present those
 “ matters to the Vestry in any shape by which their merits
 “ may elsewhere be made the subject of discussion. Never-
 “ theless, in reference to the relation which subsists between
 “ this Corporation and the junior Assistant Ministers em-
 “ ployed by it, the committee deem it the right and duty of
 “ the Vestry to notice, and, as occasion may require, to an-
 “ imadvert upon such of the public acts of those ministers as
 “ may be calculated to affect the peace and welfare of the re-
 “ ligious community with which they are united.

“ The committee having, in this view, considered the
 “ subject referred to them, are of opinion, that the pamphlet
 “ lately published by the Rev. Mr. Jones calls for the serious
 “ attention of this Board.

“ The evident tendency of appeals to the public on the
 “ subject of private differences between ministers of the
 “ Gospel, must in all cases be to weaken the reverence and
 “ respect justly due to the clerical office; to destroy its in-
 “ fluence, impair the discipline and government of the Church,
 “ and to bring reproach upon the cause of religion.

“ In the case of an associated ministry, like that of Tri-
 “ nity Church, evils more immediate and pernicious are to be
 “ apprehended, inasmuch as the people will naturally take
 “ part in the disputes of their pastors, their own passions and
 “ prejudices will be brought into the contest, and these must
 “ soon banish from the mind that peace and good will which
 “ can alone dispose it to the reception of religious instruction.

“ That a course obviously involving consequences of such
 “ deep importance to the character and welfare of the Church
 “ should have been resorted to by one of her Ministers in
 “ the first instance, without even an experiment of the efficacy

“ of that sanctioned and prescribed by her canons, adds to
“ the grief which every reflecting mind must feel on this oc-
“ casion, and leaves less room for extenuation than might ex-
“ ist under other circumstances.

“ If these sentiments should receive the approbation of the
“ Vestry, the committee beg leave to recommend that a copy
“ of this report, and of the resolution approving it, be trans-
“ mitted to the Bishop, and another to the Rev. Mr. Jones.

Signed,

“ RUFUS KING,
“ RICHARD HARISON,
“ THOMAS L. OGDEN,
“ PETER A. JAY,
“ EDWARD W. LAIGHT.

“ Which report being read and considered, it was there-
“ upon resolved unanimously, that the same be accepted and
“ approved, and that a copy thereof, and of this resolution,
“ be transmitted to the Right Rev. Bishop Moore, and also
“ to the Rev. Mr. Jones.”

And whereas, on the fourteenth day of May, in the year
last aforesaid, a copy of the said proceedings was delivered
to the said Cave Jones. And whereas, on the fifth day of
September, in the year last aforesaid, the said Cave Jones
still being Assistant Minister as aforesaid, the following pro-
ceedings, grounded on the report therein referred to, were had
by the said Rector and Inhabitants.

“ At a meeting of the Corporation of Trinity Church, in
“ the city of New-York, held in the said Church on the
“ fifth day of September, 1811 :

“ The committee on the state of the Church reported as
“ follows :

“ In respect to the disorderly state of Trinity Church and
“ its Chapels, proceeding from the misbehaviour before al-
“ luded to of the Rev. Mr. Jones, which became the subject
“ of the early animadversion of the Vestry, the committee
“ are constrained to declare, that in their opinion the peace
“ of the Church cannot be re-established so long as the con-
“ nexion between the Vestry and the Rev. Mr. Jones remains
“ undissolved.

“ Two modes by which this connexion may be dissolved have occurred to the committee.

“ *First.* From the nature and terms of the engagement between the Vestry and the Rev. Mr. Jones there can be little doubt that the same may, for sufficient cause, at any time be dissolved by either party, it being presumed that the canons of the Church do not affect contracts which had been previously made.

“ *Second.* The thirty-second canon of the General Convention of the year 1808 relates to disagreements between Ministers and their congregations or vestries, and provides for the dissolution of the connexion between them.

“ As the committee have expressed their opinion, that the connexion with Mr. Jones ought to be dissolved, it remains for the Vestry solemnly to consider and determine whether a due regard for the peace and prosperity of the Church does not require them, without delay, to have recourse to the means provided by the canons to effect this dissolution.

Signed,

“ RUFUS KING,
 “ DAVID M. CLARKSON,
 “ RICHARD HARISON,
 “ ANDREW RAYMOND.

“ Which report being under consideration, the Vestry came to the following resolutions.

“ Whereas differences and controversies exist between the Rev. Mr. Cave Jones, one of the Assistant Ministers of this Church, and this Vestry, arising out of the publication entitled ‘ A Solemn Appeal to the Church,’ which are of such a nature as cannot be settled between them ;

“ Resolved therefore, that application representing the same be made, on the part of this board, to the bishop of the diocese, pursuant to the thirty-second canon of the General Convention.

“ Thereupon resolved further, that the Right Rev. the Bishop of the diocese be, and he hereby is humbly, requested to take into immediate consideration the subject matter of the foregoing resolutions, and, with the assistance

“ of his Presbyters, to proceed therein according to the directions of the said canon.”

And whereas, on the sixth day of September, in the year last aforesaid, a copy of the proceedings last aforesaid, were, by the order of the said Rector and Inhabitants, delivered to the Right Rev. Benjamin Moore, D. D. one of the Bishops of the Protestant Episcopal Church: And whereas, on the seventh day of September, in the year last aforesaid, the said Dr. Benjamin Moore did cause a copy of the proceedings last aforesaid to be delivered to the said Cave Jones: And whereas, on the sixteenth day of October, in the year last aforesaid, the said Dr. Benjamin Moore caused to be delivered to the said Cave Jones a letter in the words following, viz.

“ *To the Rev. Cave Jones.*

“ *New-York, 15th October, 1811.*

“ SIR,

“ You are hereby informed, that on the application of the Vestry of Trinity Church, in the city of New-York, I shall meet with my Presbyters on Tuesday, November 5th, at Robinson-street, No. 20, in said city, at 12 o'clock, to proceed in your case, agreeably to the requisitions of the thirty-second canon of the General Convention of the Protestant Episcopal Church; at which time and place, if you deem it proper to attend, you will be heard in relation to the said case and the proceedings thereon.

“ BENJAMIN MOORE,

“ By his son,

CLEMENT C. MOORE.”

And whereas, on the fifth day of November, in the year last aforesaid, the said Right Rev. Bishop Moore, and also the following Presbyters of the Protestant Episcopal Church in the State of New-York, namely, Isaac Wilkins, Theodosius Bartow, John Bowden, Elias Cooper, Davenport Phelps, Joseph Prentice, John Reed, Nathaniel Bowen, Thomas Lyell, Jonathan Judd, Seth Hart, Barzillai Bulkley, Thomas V. How, Samuel Haskill, Richard C. Moore, William Harris, and Henry I. Feltus, did assemble at the time and place mentioned in the last aforesaid letter, for the purpose therein expressed.

And whereas the said Cave Jones did appear at the said time and place before the said Bishop and Presbyters, so assembled as aforesaid, and did then and there object to the authority of the said Bishop and Presbyters assembled to take cognizance of the case of him the said Cave Jones, or to take any order thereon; and to the incompetency of the said Presbyters, or some of them, to hear or determine the said case.

And whereas, after hearing the said objections of the said Cave Jones, the said Bishop, and a majority of the said Presbyters, did then and there make and subscribe the following instrument, viz.

“ New-York, Nov. 5th, 1811.

“ Whereas certain resolutions of the Vestry of Trinity Church, in the city of New-York, have been transmitted to me Benjamin Moore, D. D. Bishop of the Protestant Episcopal Church in the State of New-York; which resolutions are in the words following, viz.

“ Whereas differences and controversies exist between the Rev. Cave Jones, one of the Assistant Ministers of Trinity Church, and this Vestry, arising out of the publication entitled ‘ A Solemn Appeal to the Church,’ which are of such a nature as cannot be settled between them;

“ Resolved therefore, that application respecting the same be made, on the part of this board, to the Bishop of the diocese, pursuant to the thirty-second canon of the General Convention.

“ Thereupon resolved further, that the Right Rev. the Bishop of the diocese be, and he hereby is humbly requested to take into immediate consideration, the subject matter of the foregoing resolution, and, with the assistance of his Presbyters, to proceed therein according to the directions of the said canon.

“ Resolved, that the Clerk be directed to transmit a copy of the foregoing resolutions to the Right Rev. Bishop Moore.

“ Extract from the minutes.

THOMAS L. OGDEN, Clerk.

“ And whereas a copy of the said resolutions was, on the
 “ 7th of September last, by me furnished to the Rev. Cave
 “ Jones, and thereupon the said Cave Jones presented to me
 “ a remonstrance against any proceedings being had against
 “ him under the said canon, upon the said application of the
 “ said Vestry, as by a reference to the said remonstrance, a
 “ copy whereof is hereunto annexed, may appear.

“ And whereas, after a communication of the said remon-
 “ strance to the said Vestry, the said Vestry hath requested
 “ me to proceed under the said canon, and I having deter-
 “ mined so to proceed, the said application appearing to me
 “ to be one that comes within the purview of the said canon.

“ And whereas reasonable notice, in writing, has been
 “ served upon the said Cave Jones, on the sixteenth day of
 “ October, in the year of our Lord one thousand eight hun-
 “ dred and eleven aforesaid, to appear before me and my
 “ Presbyters on the fifth day of November, in the said year,
 “ at the hour of 12 o'clock, at No. 20 Robinson-street, to
 “ show if any thing he has to say on his part, in relation to
 “ the said application and case of controversy, at which
 “ time and place we, the said Bishop and his Presbyters, who
 “ have subscribed these presents, were duly assembled, and
 “ the said Cave Jones appeared, and was by us fully heard in
 “ relation to the said application and case of controversy ;
 “ and thereupon we, the said Bishop and Presbyters, having
 “ advised together, it appears to us that the controversy be-
 “ tween the Rev. Cave Jones, one of the Assistant Ministers
 “ of Trinity Church, in the city of New-York, and the
 “ Vestry of said Church, has proceeded such lengths as to
 “ preclude all hope of a favourable termination, and that a dis-
 “ solution of the connexion is indispensably necessary to re-
 “ store the peace and promote the prosperity of the Church ;
 “ therefore, agreeable to the authority vested in us by the
 “ thirty-second canon of the General Convention of the Pro-
 “ testant Episcopal Church, we do recommend to the Rev.
 “ Cave Jones, one of the Assistant Ministers of Trinity
 “ Church, New-York, to relinquish immediately his title to
 “ the said office of Assistant Minister, on the following con-
 “ ditions, viz.

“ That the Vestry of said Church pay to the said Rev.
“ Cave Jones the balance of his salary which may be due on
“ this day, and within thirty days thereafter the sum of one
“ thousand pounds.

“ And should the said Minister or Vestry refuse to comply
“ with the recommendation and conditions aforesaid, with the
“ concurrence of my Presbyters, the penalties of the canon
“ aforesaid with respect to the party or parties refusing, shall
“ be carried into full effect. Witness our hands this 5th of
“ November, 1811.

“ BENJAMIN MOORE,

“ Bishop of the Protestant Episcopal Church in the State
“ of New-York.

“ ISAAC WILKINS,

“ THEOD. BARTOW,

“ JOHN BOWDEN,

“ E. COOPER,

“ DAVENPORT PHELPS.

“ JOSEPH PRENTICE,

“ JOHN REED,

“ N. BOWEN,

“ THOS. LYELL,

“ JONATHAN JUDD,

“ SETH HART,

“ BARZILLAI BULKLEY,

“ THOMAS Y. HOW.”

And whereas the said Bishop Moore, and the said Pres-
byters, did also then and there resolve as follows :

“ Resolved, that the Clerk of this Convocation is hereby
“ ordered to deliver forthwith one of the foregoing instruments
“ to the Rev. Cave Jones, and another to the Vestry of
“ Trinity Church, and to require their answer in writing to
“ the same, addressed to the Right Rev. Bishop Moore, at
“ No. 20 Robinson-street, at or before ten o'clock A. M. to-
“ morrow ; and to inform the parties respectively, that a
“ failure to answer will be considered as a refusal by the
“ party so failing to comply with the terms of the recommen-
“ dation of the Bishop and his Presbyters.”

And whereas, on the day and year last aforesaid, the instrument and resolution last aforesaid was delivered to the said Cave Jones, and another copy of the said instrument, subscribed as aforesaid, and of the said resolution, was delivered on the day and year aforesaid, to the said Vestry. And whereas, by the time, and at the place mentioned in the last aforesaid resolution, the said Rector and Inhabitants did signify in writing to the said Bishop Moore, that they would comply with the recommendations and conditions mentioned in the instrument subscribed by the said Bishop and Presbyters as aforesaid.

And whereas the said Cave Jones wrote and, at the time and place mentioned in the last aforesaid resolution, caused to be delivered to the said Bishop Moore, a letter in the words following, to wit:

“ RIGHT REV. SIR,

“ The enclosed copy of a letter from the
 “ Bishop of the diocese is the only answer which I have to
 “ offer to the communication of yesterday, by your clerk, Mr.
 “ Lyell; and it is my intention to govern myself accord-
 “ ingly.

“ Your obedient servant.

“ CAVE JONES,

“ Right Rev. Benj. Moore,

“ Nov. 6, 1811.”

And whereas the copy of the letter enclosed in the letter last aforesaid was in the words following, to wit:

New-York, 5th of Nov. 1811.

“ REV. SIR,

“ I have examined the documents covered by
 “ your letter of this date, purporting to be the proceedings
 “ of the Bishop of this diocese and his Presbyters; I can
 “ only say, that I think these proceedings totally unauthor-
 “ ized by the constitution and canons of our Church, and, so
 “ far as I have been able to judge, they are not sanctioned

“ by the principles of our religion or humanity ; my advice
 “ to you, therefore, is to disregard them.

“ Rev. Sir, I am,

“ With great respect and esteem,

“ Yours sincerely,

“ SAMUEL PROVOOST, D. D.

“ Bishop of the Protestant Episcopal Church in the
 “ State of New-York, and Diocesan of the same.

“ The Rev. Cave Jones.”

And whereas, on the sixth day of November, in the year of our Lord one thousand eight hundred and eleven, after the last aforesaid letter of the said Cave Jones had been delivered, as aforesaid, the said Bishop Moore, and the majority of the Presbyters, assembled as aforesaid, did make and subscribe an instrument in the words following, to wit :

“ Whereas an instrument, signed by the Right Rev. Benjamin Moore, D. D. Bishop of the Protestant Episcopal Church in the State of New-York, and the Presbyters whose names are annexed to the same, bearing date the fifth of November inst. recommending to the Rev. Cave Jones one of the Assistant Ministers of Trinity Church, in the city of New-York, to relinquish his title to the said office of Assistant Minister, upon certain conditions therein mentioned, was served on the Rev. Cave Jones and the Vestry of Trinity Church respectively, on the day of the date thereof.

“ And whereas a notification of the Bishop and his Presbyters, passed the same day, was also at the same time served on the parties respectively, requiring them to return their answer in writing, addressed to the Right Rev. Bishop Moore, at the time and place specified ; and informing them that a failure to answer will be considered as a refusal to comply with the terms of the recommendation of the Bishop and his Presbyters.

“ And whereas the Rev. Cave Jones refused to comply with the recommendation contained in the before mentioned instrument.

“ Now therefore, according to the power vested in us by the 32d canon of the General Convention of the Protestant

“ Episcopal Church in the United States of America, we do
 “ hereby declare, that the Rev. Cave Jones be suspended
 “ from the exercise of all ministerial duties, until he shall
 “ retract such refusal, and submit to the terms of recommenda-
 “ tion: and I the Right Rev. Benjamin Moore, D. D. Bishop
 “ of the Protestant Episcopal Church in the State of New-
 “ York, do suspend him accordingly.

“ And we, the said Presbyters, as far as the said canon
 “ may require, do join in the said sentence.

“ Signed, BENJAMIN MOORE,
 “ Bishop of the Protestant Episcopal Church in the
 “ State of New-York.

“ ISAAC WILKINS,
 “ THEOD. BARTOW,
 “ JOHN BOWDEN,
 “ ELIAS COOPER,
 “ DAVENPORT PHELPS,
 “ SETH HART,
 “ THOMAS Y. HOW,
 “ NATH. BOWEN,
 “ THOS. LYELL,
 “ JOHN REED,
 “ BARZILLAI BULKLEY,
 “ JONATHAN JUDD,
 “ JOSEPH PRENTICE.”

And whereas, on the twenty-sixth day of November, in the year last aforesaid, the said Rector and Inhabitants did cause to be duly tendered to the said Cave Jones, the balance of his salary and allowances then in arrear; and did also on the same day of November, in the year last aforesaid, cause to be duly tendered to the said Cave Jones, two thousand five hundred dollars, equal in value to the sum of one thousand pounds mentioned in the said instrument, signed by the said Bishop and Presbyters first above mentioned.

And whereas the said Cave Jones did refuse to receive the said sums of money so tendered to him as aforesaid.

And whereas the said Cave Jones still claims to be an Assistant Minister as aforesaid, and has given notice to the said Rector and Inhabitants, that he is willing to perform

the duties of such Assistant Minister, and claims to be entitled to the same salary and emoluments as before the said proceedings were had against him, and insists that the said proceedings had against him by the said Bishop and Presbyters are illegal and void; and that if the said proceedings of the said Bishop and Presbyters are legal, yet that he ought in equity to receive from the said Rector and Inhabitants a larger sum of money than the said sum of one thousand pounds.

And whereas the said Rector and Inhabitants insist that the said Cave Jones is no longer entitled to receive any salary or compensation as an Assistant Minister as aforesaid, and that the said proceedings of the said Bishop and Presbyters are legal and valid, and that the said Cave Jones ought not to receive a larger compensation than the said sum of one thousand pounds.

And whereas the said Cave Jones hath commenced an action against the said Rector and Inhabitants in the Supreme Court of Judicature of the People of the State of New-York, to recover his salary and compensation as an Assistant Minister as aforesaid.

And whereas the said Rector and Inhabitants, and the said Cave Jones, have agreed to submit the said action, and all other the matters which could properly be discussed in a court of justice in any suit or action between them, the said parties, to the award, arbitrament, and determination of the Honourable James Kent, Ambrose Spencer, Smyth Thompson, William W. Van Ness, and Joseph C. Yates, Esquires, or any three of them, arbitrators, indifferently elected, chosen, and named, as well by and on the part and behalf of the said Rector and Inhabitants as of the said Cave Jones, to arbitrate, award, judge, order, and determine of and concerning the same. And it has also been agreed between the said parties, that the quantum of compensation which on a dissolution of the connexion subsisting between them ought, under all circumstances, to be paid and allowed by the said Rector and Inhabitants to the said Cave Jones, should be deemed and considered as open for adjustment and settlement by the said arbitrators, notwithstanding any decision or

opinion of the said arbitrators establishing the validity of the said sentence of suspension and proceedings herein before referred to. And in case of any decision or opinion of the said arbitrators against the validity of the said sentence and proceedings, that the said Cave Jones shall be considered as holding precisely the same office as he held under the said Rector and Inhabitants before the said sentence, and upon the same tenure, and with the same rights in respect to the emoluments of the said office.

Now, this indenture witnesseth, that the said Rector and Inhabitants, and the said Cave Jones, do, by these presents, submit themselves to the award, order, arbitrament, final end, and determination of the Hon. James Kent, Smyth Thompson, Ambrose Spencer, William W. Van Ness, and Joseph C. Yates, Esquires, or any three of them, arbitrators, indifferently elected, chosen, and named, as well by and on the part and behalf of the said Rector and Inhabitants, as of the said Cave Jones, to arbitrate, award, judge, order, and determine of and concerning the premises above mentioned to be agreed to be submitted, so as the award of the said arbitrators, or any three of them, be made in writing, under their hands and seals, ready to be delivered to the said parties in difference on or before the first day of June * next ensuing. And the said Cave Jones, for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree to and with the said Rector and Inhabitants, and their successors, that the said Cave Jones, his executors, or administrators, will not, at any time hereafter, revoke the authority hereby given to the said arbitrators, but will in all things submit himself and themselves to the award and arbitrament of the said arbitrators so to be made as aforesaid, and will well and faithfully perform, fulfil, and keep the same, and all and every agreement, matter, and thing in these presents mentioned, on the part of the said Cave Jones, his heirs, executors, or administrators, to be observed, performed, and fulfilled, according to the true intent and meaning thereof. And the said Rector and Inhabitants, for themselves and

* *Extended to the first of October, 1813.*

their successors, do hereby covenant, promise, and agree to and with the said Cave Jones, his executors and administrators, that the said Rector and Inhabitants, and their successors, will not, at any time hereafter, revoke the authority hereby given to the said arbitrators, but will in all things submit themselves to the award and arbitrament of the said arbitrators so to be made as aforesaid, and will well and faithfully perform, fulfil, and keep the same, and all and every agreement, matter, and thing in these presents mentioned, on the part of the said Rector and Inhabitants, and their successors, to be performed, observed, and fulfilled, according to the true intent and meaning thereof.

And it is hereby agreed by and between the said parties, that these presents, and the submission hereby made of the said matters in controversy, shall be made a rule of the Supreme Court of Judicature of the People of the State of New-York, to the end that the said parties in difference may be finally concluded by the said arbitration and award, pursuant to the statute in such case made and provided.

And it is further agreed by and between the parties aforesaid, that the printed copies of the Journals of the General Convention of the Protestant Episcopal Church, and of the Convention of the Protestant Episcopal Church in the State of New-York, and the printed copies of the Canons made by each of the said Conventions, and heretofore printed and published, may be given in evidence before the said arbitrators, and shall be of equal effect with the originals of the said Journals and Canons.

And it is in like manner agreed between the said parties, that the resolution of the Vestry of Trinity Church, whereby the said Cave Jones was called and appointed to be one of the Assistant Ministers of the said Church, and the letters of call and acceptance which passed on that occasion, shall be, and is hereby admitted to be equally binding and effectual for the purposes of this submission, as if the same was under the seal of the said Rector and Inhabitants; but nothing herein is to be considered as admitting his having any legal right to be considered as standing in the same situation as the Assistant Rector, or Minister designated in the Charter of the said Corporation.

And it is further agreed between the parties aforesaid, that the said Rector and inhabitants shall produce before the said arbitrators, such of the records or minutes of their proceedings, or authenticated copies thereof, as shall be called for by the said Cave Jones, and as the said arbitrators shall determine ought to be produced. And that either party shall be at liberty to produce any testimony that the arbitrators may think proper to receive. And that the witnesses on each side shall be examined on oath, which oath shall be administered by such person as the said arbitrators may think proper to direct.

In witness whereof the said party of the first part have caused their seal to be hereunto affixed, and the said party of the second part hath hereunto set his hand and seal interchangeably the day and year first above written.

CAVE JONES.

Scaled and delivered in the presence of

CADWALLADER D. COLDEN,

ROB. LAWRENCE.

DOCUMENTS

RELATIVE TO THE PROCEEDINGS AGAINST THE

REV. CAVE JONES.

CANON XXIX. of the General Convention of the Protestant Episcopal Church.

Concerning the Election and Institution of Ministers into Parishes or Churches.

IT is hereby required, that on the election of a Minister into any Church or parish, the Vestry shall deliver, or cause to be delivered, to the Bishop, or, where there is no Bishop, to the Standing Committee of the Diocese, notice of the same, in the following form, or to this effect.

We, the Church-wardens, (*or, in case of an Associated Rector or an Assistant Minister, We, the Rector and Church-wardens*) do certify to the Right Rev. (*naming the Bishop*), or to the Rev. (*naming the President of the Standing Committee*), that (*naming the person*) has been duly chosen Rector (*or Associated Rector, or Assistant Minister, as the case may be*) of (*naming the parish, or church, or churches.*)

Which Certificate shall be signed with the names of those who certify.

And if the Bishop or the Standing Committee be satisfied that the person so chosen is a qualified Minister of this Church, the Bishop, or the President of the Standing Committee, shall transmit the said certificate to the Secretary of the Convention, who shall record it in a book to be kept by him for that purpose. And if the Minister elect be a Presbyter, the Bishop, or President of the Standing Committee, may, at the instance of the Vestry, proceed to have him instituted according to the office established by this Church. But if he be

a Deacon, the act of institution shall not take place till after he shall have received Priest's Orders, when the Bishop, or President, may have it performed.

But if the Bishop, or the Standing Committee, be not satisfied as above, he, or they, shall, at the instance of the parties, proceed to inquire into the sufficiency of the person so chosen, according to such rules as may be made in the respective Dioceses, and shall confirm or reject the appointment, as the issue of that inquiry may be.

No Minister who may be hereafter elected into any Parish or Church, shall be considered as a regularly admitted and settled Parochial Minister, in any Diocese or State, or shall as such, have any vote in the choice of a Bishop, until he shall have been instituted according to the office prescribed by this Church.

This Canon shall not be obligatory on the Church in those Dioceses or States with whose usages, laws, or charters it interferes. Nor shall any thing in this Canon, or in any other Canon, or in any service of the Church relative to the office of Associated Rectors, apply to the Church in those States or Dioceses where this office is not recognized by the constitution, laws or canons thereof.

But it is to be understood, that this Church designs not to express any approbation of any laws or usages, which make the station of a Minister dependant on any thing else than his own soundness in the faith, or worthy conduct. On the contrary, the Church trusts that every regulation in contrariety to this, will be in due time reconsidered; and that there will be removed all hindrances to such reasonable discipline as appears to have belonged to the Churches of the most acknowledged orthodoxy and respectability.

Letter of Institution, given by the Bishop, extracted from the Institution Office.

“ We do by these presents give and grant unto you, in whose learning, diligence, sound doctrine, and prudence, we do fully confide, our license and authority, to perform the office of a Priest in the Parish [or Church] of *E*. And also

hereby do institute you into said Parish [*or Church*], possessed of full power to perform every act of sacerdotal function among the people of the same ; you continuing in communion with us, and complying with the rubrics and canons of the Church, and with such lawful directions as you shall at any time receive from us.

“ And as a canonically instituted Priest into the office of Rector [*Associated Rector, or Assistant Minister, as the case may be,*] of Parish [*or Church,*] you are faithfully to feed that portion of the flock of Christ which is now entrusted to you ; not as a man-pleaser, but as continually bearing in mind, that you are accountable to us here, and to the Chief Bishop and Sovereign Judge of all hereafter.

“ And as the Lord hath ordained, that they who serve at the altar should live of the things belonging to the altar ; so we authorize you to claim and enjoy all the accustomed temporalities appertaining to your cure, until some urgent reason or reasons occasion a wish in you, or in the congregation committed to your charge, to bring about a separation, and dissolution of all sacerdotal relation between you and them ; of all which you will give us due notice : and in case of any difference between you and your congregation, as to a separation, and dissolution of all sacerdotal connexion between you and them, we, your Bishop, with the advice of our Presbyters, are to be the ultimate arbiter and judge.

“ In witness whereof we have hereunto affixed our Episcopal seal and signature, at this day of A. D. and in the year of our consecration.”

*Extract from “ the Form and Manner of Ordering Priests,”
in Use in the Protestant Episcopal Church.*

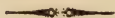
Questions proposed to the person to be ordered Priest by

“ *The Bishop.* Will you maintain and set forwards, as much as lieth in you, quietness, peace, and love among all Christian people, and especially among them that are or shall be committed to your charge ?

“ *Answer.* I will so do, the Lord being my helper.

“ *The Bishop.* Will you reverently obey your Bishop, and other chief Ministers, who according to the Canons of the Church, may have the charge and government over you; following with a glad mind and will, their godly admonitions, and submitting yourselves to their godly judgments ?

“ *Answer.* I will so do, the Lord being my helper.”



CANON XXX. of the General Convention of the Protestant Episcopal Church.

Respecting the Dissolution of all Pastoral Connexion between Ministers and their Congregations.

When any Minister has been regularly instituted or settled in a Parish or Church, he shall not be dismissed without the concurrence of the Ecclesiastical authority of the Diocese or State ; and in case of his dismissal without such concurrence, the Vestry or Congregation of such Parish or Church shall have no right to a representation in the Convention of the State or Diocese, until they have made such satisfaction as the Convention may require. Nor shall any Minister leave his congregation against their will, without the concurrence of the Ecclesiastical authority aforesaid; and if he shall leave them without such concurrence, he shall not be allowed to take a seat in any Convention of this Church, or be eligible into any Church or Parish within the States which have acceded to the Constitution of this Church, until he shall have made such satisfaction as the Ecclesiastical authority of the Diocese or State may require.

In the case of the regular and canonical dissolution of the connexion between a Minister and his Congregation, the Bishop, or, if there be no Bishop, the Standing Committee, shall direct the Secretary of the Convention to record the same. But if the dissolution of the connexion between any Minister and his Congregation be not regular or canonical, the Bishop, or Standing Committee, shall lay the same before the Convention of the Diocese or State, in order that the above mentioned penalties may take effect.

This Canon shall not be obligatory upon those States or Dioceses with whose usages, laws, or charters it interferes.

CANON XXXII. of the General Convention of the Protestant Episcopal Church.

Respecting Differences between Ministers and their Congregations.

In cases of controversy between Ministers, who now, or may hereafter, hold the Rectorship of Churches or Parishes, and the Vestry or Congregation of such Churches or Parishes, which controversies are of such a nature as cannot be settled by themselves, the parties or either of them, shall make application to the Bishop of the Diocese, or, in case there be no Bishop, to the Convention of the State. And if it appear to the Bishop and his Presbyters, or, if there be no Bishop, to the Convention, or the Standing Committee of the Diocese or State, if the authority should be committed to them by the Convention, that the controversy has proceeded such lengths as to preclude all hope of its favourable termination, and that a dissolution of the connexion which exists between them is indispensably necessary, to restore the peace, and promote the prosperity of the Church, the Bishop and his Presbyters, or, if there be no Bishop, the Convention, or the Standing Committee of the Diocese or State, if the authority should be committed to them by the Convention, shall recommend to such ministers to relinquish their titles to their Rectorship on such conditions as may appear reasonable and proper to the Bishop and his Presbyters, or if there be no Bishop, to the Convention, or the Standing Committee of the Diocese or State, if the authority should be committed to them by the Convention. And if such Rectors or Congregations refuse to comply with such recommendation, the Bishop and his Presbyters, or if there be no Bishop, the Convention, or the Standing Committee of the Diocese or State, if the authority should be committed to them by the Convention, with the aid and consent of a Bishop, may, at their discretion, proceed, according to the Canons of the Church, to suspend the former from

the exercise of any Ministerial duties within the Diocese or State ; and prohibit the latter from a seat in the Convention, until they retract such refusal, and submit to the terms of the recommendation : and any Minister so suspended shall not be permitted, during his suspension, to exercise any Ministerial duties in any other Diocese or State. This Canon shall apply also to the cases of Associated Rectors and Assistant Ministers and their Congregations.

This Canon shall not be obligatory upon the Church in those States or Dioceses with whose usages, laws or charters it interferes.

Extract from the Charter of Trinity Church, relative to the Office of Assistant Rector.

Page 12. “ The Rector of the said Parish for the time being shall, and may, by and with the consent of the said Vestrymen and Church-Wardens for the time being, or any eleven or more of them, whereof one of the Church-Wardens to be one, from time to time, nominate one able Protestant Minister, in Priest’s Orders, to reside in the said Parish, to be Preacher and Assistant to the said Rector, and his successors, in the celebration of the divine offices of praying and preaching, and other duties incident to be performed in the said Church and Parish, as the said Rector shall require of him,” which “ said Preacher Assistant shall continue in his said place during his natural life, if he shall so long inhabit there ; except on some offence, or misgovernment by him committed, and unless for cause reasonable proved, he shall be displaced by the said Rector for the time being, by and with the consent of the said Vestrymen, or any eleven or more of them.”

Extract from the Minutes of the Vestry of Trinity Church, relative to the appointment of an Assistant Rector.

At a meeting of the Corporation of Trinity Church, held the 13th of March, 1811,

A nomination, by the Rector, of the Rev. Abraham Beach to be his Assistant, was produced and read with the approba-

tion and consent of the Church-Wardens and a majority of the Vestry, to the same, and is as follows :

GENTLEMEN,

“ I nominate the Rev. A. Beach, D. D. to be my Assistant, according to the provisions of the charter. New-York, 8th March, 1811.

“ BENJAMIN MOORE, Rector,

“ By CLEMNT C. MOORE, his son.

“ *To the Wardens and Vestrymen of Trinity Church.*”

We, the undersigned, consented to the above nomination, and in testimony thereof have hereunto subscribed our names.

Signed,

RUFUS KING,	} Church-War-
ANTHONY L. BLEECKER,	
MOSES ROGERS,	dens.
RICHARD HARISON,	
JACOB LE ROY,	
THOMAS BARROW,	
FREDERICK DE PEYSTER,	
CHARLES M'EVERS,	
T. L. OGDEN,	
NEH. ROGERS,	
JOHN LEGEAR,	
JOHN M'VICKAR,	
DAVID M. CLARKSON,	
WYNANT VAN ZANDT, jun.	
JOHN CLARK,	
FRANCIS DOMINICK,	
ANDREW RAYMOND,	
JOSHUA JONES,	
JOHN ONDERDONK,	
ANDREW SMITH,	
GARRIT H. VAN WAGENEN.	

Mr. Jones's Call.

REV. SIR,

We are commissioned by the Vestry of Trinity Church to inform you, that you are invited by a vote of that board, passed this day, to accept the office of an Assistant Minister in the Churches under their care, upon the same terms on which the other Assistant Ministers are placed: the salary is five hundred pounds per annum. We are further to remark, that it is required that you (in conjunction with the Rev. Mr. Hobart) perform divine service in one of the Churches on Sunday evenings.

We are, Rev. Sir,

Your very humble servants,

JOHN CHARLTON,
ANDREW HAMERSLEY, } *Committee.*
HUGH GAINÉ

Jan. 14, 1801.

The Rev. Cave Jones.

Mr. Jones's Acceptance.

Accomach, 26th of January, 1801.

*Messrs. John Charlton, Andrew Hamersley, Hugh Gainé,
Committee,*

GENTLEMEN,

You will be so good as to communicate to the Vestry of Trinity Church the becoming sense which I entertain of their regard, expressed by the invitation transmitted by their committee. I accept of their appointment; and earnestly pray to God that this dispensation of his providence may tend to the advancement of the Redeemer's kingdom, and our mutual edification and establishment in the faith. You will please to inform me when the vacancy will take place, and consequently when it is the wish of the Vestry that I should be in New-York; at the same time I take the

liberty to suggest that it will scarcely be in my power till sometime in the month of May.

With sentiments of perfect respect,

I am, Gentlemen,

Your obedient servant,

CAVE JONES.

*Extract from the minutes of the Vestry of Trinity Church,
relative to differences with Mr. Jones.*

*At a meeting of the Corporation of Trinity Church, held the
9th of May, 1811,*

The Assistant Rector laid before the board a letter from the Rev. John Henry Hobart, in the words following :

“ To the Rev. Dr. Beach.

“ Whereas the Right Rev. Benjamin Moore, D. D. Bishop of the Protestant Episcopal Church in the State of New-York, hath caused a letter to be addressed to the Secretary of the Convention of the said Church, which letter is in the words following :

“ New-York, 20th March, 1811.

“ REV. SIR,

“ The severe affliction with which it hath pleased Almighty God to visit me, has affected my state of health in such a manner, that it will be impossible for me, without assistance, to perform the duties of the Episcopal Office. I am therefore anxious that a Special Convention should be called, for the purpose of deliberating on the propriety of appointing an Assistant Bishop in this diocese. A variety of considerations, affecting the most important interests of our holy Church, appear to me to render this measure indispensable ; and it is, I think, very desirable that the appointment should be made without delay, so that the consecration may take place at the ensuing General Convention. You will therefore be so good as to take the necessary steps for calling a Special Convention of the Church in this diocese,

to meet in the city of New-York, on the second Teusday of May next.

“ Praying sincerely that all our undertakings may, by Divine Providence, be guided in such a way as may best conduce to the glory of God and the good of his Church, I remain, with affection and esteem, Rev. Sir, your friend and Father in the Lord.

BENJAMIN MOORE,

“ Bishop of the Protestant Episcopal Church
“ in the State of New-York.

By his son, CLEMENT C. MOORE.

“ The Rev. John Henry Hobart, D. D. Secretary of the
Convention of the Protestant Episcopal Church in
the State of New-York.”

“ Now, therefore, in obedience to the directions of the Bishop contained in the above letter, notice is hereby given, that a Special Convention of the Protestant Episcopal Church in the State of New-York will be held, for the purpose specified in the letter aforesaid, in the city of New-York, on the second Teusday of May next, at ten o'clock A. M. in Trinity Church, at which time and place the Clergy and Lay Delegates are requested to attend.

“ JOHN HENRY HOBART,

“ Secretary of the Convention.

“ *New-York, March 21, 1811.*”

Thereupon resolved, that this Board do now proceed to the appointment of Delegates to the said Convention. Whereupon the Board having proceeded to such appointment by ballot, Messrs. Rufus King, Richard Harison, John Onderdonk, and Thomas L. Ogden, were duly chosen.

Resolved, that a committee of this Board be appointed to take into consideration a late publication of the Rev. Mr. Jones, one of the Assistant Ministers of this Church, entitled “ A Solemn Appeal to the Church,” and that they report to the Vestry, at their next meeting, whether any, and if any, what measures ought to be taken by this Board, in relation to the same.

The Board having proceeded to the appointment of the said committee, Messrs. King, Harison, Jay, Laight, and Ogden, were duly chosen.*

*At a Meeting of the Corporation of Trinity Church, held the
13th of June, 1811,*

Resolved, that a committee be appointed to take into consideration the present situation of the Church, and to confer with the Rector and Assistant Rector upon such matters, in relation to the same, as they shall judge proper.

*At a Meeting of the Corporation of Trinity Church, held the
5th of September, 1811,*

A letter addressed to the Vestry by the Rev. Mr. Jones, was received and read. This letter is in the words following:

“ New-York, September 4th, 1811.

“ GENTLEMEN,

“ As the subject of the unhappy differences existing in the Church has been formally brought to the cognizance and investigation of the Vestry, I must beg to be indulged with the liberty of making a few remarks.

“ That I have not earlier addressed you on the subject, has been owing entirely to unfeigned respect. When you were pleased to communicate to me, by your Clerk, certain resolutions, expressive of your disapprobation of the mode of making my grievances known, the thought suggested itself to me, that possibly an answer might be expected; yet, upon due reflection—upon ascertaining from a respectable member of your body, and of the committee by whom those resolutions were reported, the intended extent of that instrument; and still more, upon consulting with confidential friends, to whose judgment I pay deference; it appeared the most respectful mode to submit in silence to what I could not but lament was a difference of sentiment from what I felt myself compelled to entertain.

* For the report of the committee, made at the meeting of the Corporation on the 13th of May, 1811, and the proceedings of the Vestry on the same, see page 2.

" But now that the subject is brought immediately to your view by a pamphlet from my colleague, addressed "to the Vestry of Trinity Church;" silence on my part might be construed into a consciousness of being unable to meet the charges therein contained. Justice to myself compels me to suggest, that it will be in my power to set the several matters discussed in a light very different from that in which, from the manner of the statement, from the absence of circumstances, and from various other causes, they now appear. Yet feeling a reluctance to proceed with the subject, the introduction of which has met with your disapprobation; and still more, being unwilling to adopt any mode of communication which might again appear to you to be incorrect; I have determined to wait for the intimation of your opinion, as to the line which it would be proper for me to pursue. If it shall be the determination of your body to take up the subject on the merits of the case, I must hope for indulgence with a further opportunity for self-defence. And in such case I must beg to be allowed time to collect materials necessary to my vindication, in such way as you shall be pleased to suggest.

" In order however to prevent the necessity for such a resort, and from an unfeigned desire on my part to restore harmony to the Church, I beg leave to state explicitly, that I am ready to enter upon any terms of amicable adjustment, consistent with the character of gentlemen and Christians.

" Even without this amicable adjustment, however, if such cannot be obtained, there appears to be no insuperable obstacle to the restoration of peace. Resentment can surely be buried, and a decorous deportment observed, even though an entire oblivion of the past may not be obtained. For myself, I can conscientiously declare that an entire disposition exists for the removing of all difficulties, and for the adopting of any measures which your wisdom may devise, for the restoration of peace and harmony to the Church.

" With the greatest respect,

" I am, Gentlemen,

" Your obedient servant,

" CAVE JONES."

The committee to whom was referred the resolution of the Vestry respecting the separation of St. George's and St. Paul's Chapels, and who were appointed to take into consideration the present state of the Church, made a report in the words following.*

At a Meeting of the Corporation of Trinity Church, held the 27th of September, 1811.

The Rector communicated to the Vestry a paper, subscribed by the Rev. Mr. Cave Jones, protesting against the application of the 32d canon of the Church to the differences alleged to exist between him and the Vestry; thereupon resolved, that the Clerk be directed to deliver to the Right Rev. Bishop Moore copy of that part of the late report of the committee on the state of the Church which relates to those differences, and to request that he will be pleased to proceed thereupon according to the directions of the canon above referred to.

Extract from the Minutes of the Vestry of Trinity Church, at a meeting held the 6th of November, 1811.

“An instrument was presented to the Board, under the hands of the Right Rev. Bishop Moore, D. D. Bishop of the Diocese, and his Presbyters, dated the 5th of November instant, whereby it is recommended that the Rev. Cave Jones, one of the Assistant Ministers of this Church, do relinquish immediately his title to the said office of Assistant Minister; that this Vestry do pay to him the balance of his salary up to the date of the said instrument; and also, within the period of thirty days thereafter, the sum of one thousand pounds; which instrument being read and duly considered, it was thereupon resolved as follows:

“Resolved, that this Vestry do agree to the said terms, and will do every thing necessary on their part to carry the same into execution.

* *For the report and the proceedings thereon, see p. 4 and 5.*

“ Resolved, that a copy of the said resolution be forthwith delivered to the said Bishop and Presbyters.

“ Resolved further, that the Treasurer of the Corporation be authorized, previously to the next meeting of the Vestry, to pay to the Rev. Cave Jones, the arrears of his salary as an Assistant Minister of this Church, including a gratuity at the rate of one thousand dollars per annum, such salary and gratuity to be computed to the time of payment or tender. Also to offer to pay to him the said sum of one thousand pounds upon his relinquishing his title to the office of an Assistant Minister of this Church; and, if he shall make such relinquishment, to pay him the said sum according to the terms of the instrument above recited.”

DOCUMENTS

RELATIVE TO THE DIOCESAN AUTHORITY OF

*BISHOP MOORE.**Constitution of the Protestant Episcopal Church in the United States of America.*

Art. 1. THERE shall be a General Convention of the Protestant Episcopal Church in the United States of America, *on the third Tuesday in May, in the year of our Lord 1808, and on the third Tuesday in May in every third year afterwards*, in such place as shall be determined by the Convention; and special meetings may be called at other times, in the manner hereafter to be provided for: and this Church, in a majority of the States which shall have adopted this Constitution, shall be represented, before they shall proceed to business; except that the representation from two States shall be sufficient to adjourn; and in all business of the Convention, freedom of debate shall be allowed.

Art. 2. The Church in each State shall be entitled to a representation of both the Clergy and the Laity; which representation shall consist of one or more Deputies, not exceeding four of each order, chosen by the Convention of the State; and in all questions, when required by the Clerical and Lay Representation from any State, each order shall have one vote; and the majority of suffrages by States shall be conclusive in each order, provided such majority comprehend a majority of the States represented in that order: The concurrence of both orders shall be necessary to constitute a vote of the Convention. If the Convention of any State should neglect or decline to appoint Clerical Deputies, or if they should neglect or decline to appoint Lay Deputies; or if any of those of either order appointed should neglect to attend, or be prevented by sickness or any other accident, such State shall, nevertheless, be considered as duly represented by such

Deputy or Deputies as may attend, whether Lay or Clerical. And if through the neglect of the Convention of any of the Churches which shall have adopted, or may hereafter adopt this Constitution, no Deputies, either Lay or Clerical, should attend at any General Convention, the Church in such State shall nevertheless be bound by the acts of such Convention:

Art. 3. The Bishops of this Church, when there shall be three or more, shall, whenever General Conventions are held, form a separate House, with a right to originate and propose acts, for the concurrence of the House of Deputies, composed of Clergy and Laity; and when any proposed act shall have passed the House of Deputies, the same shall be transmitted to the House of Bishops, who shall have a negative thereupon; and all acts of the Convention shall be authenticated by both Houses. And in all cases, the House of Bishops shall signify to the Convention their approbation or disapprobation (the latter, with their reasons in writing) within three days after the proposed act shall have been reported to them for concurrence; and in failure thereof, it shall have the operation of a law. But until there shall be three or more Bishops, as aforesaid, any Bishop attending a General Convention shall be a member *ex officio*, and shall vote with the Clerical Deputies of the State to which he belongs; and a Bishop shall then preside.

Art. 4. The Bishop or Bishops in every State shall be chosen agreeably to such rules as shall be fixed by the Convention of that State: and every Bishop of this Church shall confine the exercise of his Episcopal Office to his proper diocese or district; unless requested to ordain, or confirm, or perform any other act of the Episcopal Office, by any Church destitute of a Bishop.

Art. 5. A Protestant Episcopal Church in any of the United States, not now represented, may, at any time hereafter, be admitted, on acceding to this Constitution.

Art. 6. In every State the mode of trying Clergymen shall be instituted by the Convention of the Church therein. At every trial of a Bishop there shall be one or more of the Episcopal Order present; and none but a Bishop shall pro-

nounce sentence of deposition or degradation from the ministry, on any Clergyman, whether Bishop, or Presbyter, or Deacon.

Art. 7. No person shall be admitted to Holy Orders until he shall have been examined by the Bishop and by two Presbyters, and shall have exhibited such testimonials, and other requisites, as the Canons in that case provided may direct: nor shall any person be ordained until he shall have subscribed the following declaration: "I do believe the holy scriptures of the Old and New Testament to be the word of God, and to contain all things necessary to salvation: And I do solemnly engage to conform to the doctrines and worship of the Protestant Episcopal Church in these United States." No person ordained by a foreign Bishop shall be permitted to officiate as a Minister of this Church, until he shall have complied with the canon or canons in that case provided, and have also subscribed the aforesaid declaration.

Art. 8. A book of common prayer, administration of the sacraments, and other rites and ceremonies of the Church, articles of religion, and a form and manner of making, ordaining, and consecrating Bishops, Priests and Deacons, when established by this or a future General Convention, shall be used in the Protestant Episcopal Church in those States which shall have adopted this Constitution.

Art. 9. This Constitution shall be unalterable, unless in General Convention, by the Church, in a majority of the States which may have adopted the same; and all alterations shall be first proposed in one General Convention, and made known to the several State Conventions before they shall be finally agreed to, or ratified, in the ensuing General Convention.

*Done in the General Convention of the Bishops, Clergy,
and Laity of the Church, the second day of October,
1789.*

Extract from the Canons of the Protestant Episcopal Church in the United States of America, agreed on in several General Conventions of said Church, and set forth, with Alterations and Additions, in General Convention, 1808.

CANON I.

Of the Orders of Ministers in this Church.

In this Church there shall always be three orders in the Ministry, viz. Bishops, Priests, and Deacons.

CANON II.

Of the Election of Bishops.

No Diocese or State shall proceed to the election or appointment of a Bishop, unless there be at least six officiating Presbyters residing therein, and who, agreeably to the Canons of the Church, may be qualified to vote for a Bishop; a majority of whom at least shall concur in such election. But the Conventions of two or more Dioceses or States, having together nine or more such Presbyters, may associate and join in the election of a Bishop.

CANON III.

Certificates to be produced on the part of the Bishops elect.

Every Bishop elect, before his consecration, shall produce to the Bishops to whom he is presented for that holy office, from the Convention by whom he is elected a Bishop, and from the House of Clerical and Lay Deputies in General Convention, certificates, respectively, in the following words, viz.

Testimony from the Members of the Convention in the State or Diocese from whence the Person is recommended for Consecration.

We, whose names are underwritten, fully sensible how important it is that the sacred office of a Bishop should not be unworthily conferred, and firmly persuaded that it is our duty to bear testimony on this solemn occasion, without partiality

or affection, do, in the presence of Almighty God, testify, that *A. B.* is not, so far as we are informed, justly liable to evil report, either for error in religion, or for viciousness in life; and that we do not know or believe there is any impediment on account of which he ought not to be consecrated to that holy office. We do moreover jointly and severally declare, that we do in our consciences believe him to be of such sufficiency in good learning, such soundness in the faith, and of such virtuous and pure manners, and godly conversation, that he is apt and meet to exercise the office of a Bishop, to the honour of God and the edifying of his Church, and to be an wholesome example to the flock of Christ.

The above certificate shall be presented to the House of Clerical and Lay Deputies in General Convention.

Testimony from the House of Clerical and Lay Deputies in General Convention.

We, whose names are underwritten, fully sensible how important it is that the sacred office of a Bishop should not be unworthily conferred, and firmly persuaded that it is our duty to bear testimony on this solemn occasion, without partiality or affection, do, in the presence of Almighty God, testify, that *A. B.* is not, so far as we are informed, justly liable to evil report, either for error in religion, or for viciousness of life; and that we do not know or believe there is any impediment on account of which he ought not to be consecrated to that holy office; but that he hath, as we believe, led his life, for three years last past, piously, soberly, and honestly.

CANON IV.

Of Standing Committees.

In every State or Diocese there shall be a Standing Committee, to be appointed by the Convention thereof.

CANON V.

Of the Consecration of Bishops in the Recess of the General Convention.

If, during the recess of the General Convention, the Church in any State or Diocese should be desirous of the

consecration of a Bishop, the Standing Committee of the Church in such State or Diocese may, by their President, or by some person or persons specially appointed, communicate the desire to the Standing Committees of the Churches in the different States, together with copies of the necessary testimonials; and if the major number of the Standing Committees, shall consent to the proposed consecration, the Standing Committee of the State or Diocese concerned, may communicate the evidences of such consent, together with the other testimonials, to any three Bishops of this Church, who may thereon proceed to the consecration. The evidences of the consent of the different Standing Committees shall be in the form prescribed for the House of Clerical and Lay Deputies, in the General Convention; and, without the aforesaid requisites, no consecration shall take place during the recess of the General Convention.

CANON XXV.

Notorious Crimes and Scandals to be censured.

If any persons within this Church offend their brethren by any wickedness of life, such persons shall be repelled from the holy communion, agreeably to the rubric, and may be further proceeded against, to the depriving them of all privileges of Church membership, according to such rules or process as may be provided, either by the General Convention, or by the Convention in the different States or Dioceses.

CANON XXVII.

Of publishing the Sentence of Degradation against a Clergyman.

Whenever a Clergyman shall be degraded, agreeably to the Canons of any particular Church in the union, the Bishop who pronounces sentence shall, without delay, cause the sentence of degradation to be published from every pulpit where there may be an officiating Minister, throughout the Diocese or District in which the degraded Minister resided;

and also shall give information of the sentence to all Bishops of this church; and, where there is no Bishop, to the Standing Committee.

*Extracts from the Journal of a Special Convention of the
Protestant Episcopal Church in the State of New-York,
September, 1801.*

*Extract from the "list of the Clergy and Lay Delegates who
composed this Convention.*

"The Right Rev. Samuel Provoost, Bishop of the Protestant Episcopal Church in the State of New-York; the Rev. Benjamin Moore, D. D. Rector of Trinity Church in the city of New-York; Abram Beach, D. D. John Henry Hobart, Cave Jones, Assistant Ministers of Trinity Church in the city of New-York."

Extract from the Journal of the same Convention.

"The Right Rev. Bishop Provoost addressed the Convention, and resigned his Episcopal Jurisdiction of this Diocese."

"On motion of Mr. Harison, resolved that a committee be appointed to consider and report what measures are necessary to be pursued in the present situation of this Church.

"The following gentlemen were accordingly appointed by ballot, viz. the Rev. Dr. Moore, Rev. Dr. Beach, Rev. Mr. Wilkins, Robert Watts, and Richard Harison, Esquires."

"The committee appointed to consider and report what measures are necessary to be pursued in the present situation of this Church, made a report as follows, viz.

'The Right Rev. Samuel Provoost, D. D. having declared that he resigned his jurisdiction as Bishop of the Protestant Episcopal Church in this State, and having expressed his affectionate wishes for the prosperity of the Church in general, and the individual members of the Convention,

“ Resolved that the Convention return their thanks to the Bishop for his kind wishes, and whilst they regret that he should have judged himself under the necessity of quitting so suddenly the exercise of the Episcopal Office, and those solemn and important duties which are connected with it, they beg leave to assure him of their sincere and fervent prayers that Divine Providence may so guide and govern him in all his ways, as will most conduce both to his temporal and eternal felicity.

“ Resolved, that a copy of this resolution be transmitted to Bishop Provoost by the Secretary of the Convention.

“ Resolved also, that it be recommended to the Standing Committee to call a Special Convention, to meet in this city in the month of November next, for the purpose of choosing a suitable person to be consecrated as a Bishop, and to have the charge of the Protestant Episcopal Church in the State of New-York.’

“ The preamble, and the first and second resolutions of the foregoing report were unanimously adopted by the Convention. The last resolution was rejected.

“ On motion of Mr. Harison, resolved, that this Convention will proceed to-morrow morning to the election of a suitable person to be recommended for consecration as Bishop of the Protestant Episcopal Church in this State.

“ A memorial was presented from the corporation of Christ Church, in the city of New-York, on the situation of their Church.

“ On motion of the Rev. Mr. Hobart, resolved, that this Convention cannot, with propriety, act upon the memorial from the corporation of Christ Church while this Church is destitute of a Bishop.”

“ The Convention then proceeded, by ballot, to the choice of a person to be recommended for consecration as Bishop of the Protestant Episcopal Church in this State, and on counting the votes, it appeared, that the Rev. Benjamin Moore, D. D. Rector of Trinity Church in the city of New-York, was unanimously chosen by Clergy and Laity.”

“ The members then proceeded to sign the testimonial required by the Canon of the General Convention in favour of

the Rev. Benjamin Moore, D. D. Bishop elect of this Church.”

Extracts from the “ Journal of the Proceedings of the Bishops, Clergy, and Laity of the Protestant Episcopal Church in the United States of America ; in a Convention held in the city of Trenton, in New-Jersey, from Tuesday, September 8, to Saturday, September 12, 1801.”

Journal of the House of Clerical and Lay Deputies.

“ The Rev. Dr. Beach presented the testimonial required by the Canons, from the State Convention of New-York, in favour of the Rev. Benjamin Moore, D. D. the Bishop elect of that State.

“ On motion, the following message was sent by the Rev. Mr. Hobart to the House of Bishops : ‘ The House of Clerical and Lay Deputies wish to know from the House of Bishops whether they have received any communication from Bishop Provoost, on the subject of his resignation of his Episcopal jurisdiction in the State of New-York.’

“ A communication was received from the House of Bishops on the subject of the foregoing message from this House.

“ The House then proceeded to sign the testimonial required by the Canons in favour of the Rev. Benjamin Moore, D. D. Bishop elect of the State of New-York ; which together with the testimonial from the State Convention of New-York, was ordered to be presented to the House of Bishops.”

“ A message was received from the House of Bishops, informing this House that they had read and approved the testimonials in favour of the Rev. Dr. Benjamin Moore, Bishop elect of the State of New-York, and had appointed to-morrow morning, ten o’clock, for his consecration.

“ On motion, resolved, that the Rev. Mr. Bend inform the House of Bishops that this House will attend the consecration of the Rev. Dr. Moore at the appointed time.”

“ The House then adjourned to attend divine service at St. Michael’s Church, Trenton, on occasion of the consecra-

tion of the Rev. Dr. Moore, Bishop elect of the Church in New-York."

Journal of the House of Bishops of the same Convention.
1801.

" A letter was laid before this house from the Right Rev. Bishop Provoost, addressed to Bishop White, as follows :

' *New-York, Sept. 7, 1801.*

' Right Rev. and dear Sir,

' I think it my duty to request, that, as President of the House of Bishops, you will inform that venerable body, that, induced by ill health, and some melancholy occurrences in my family, and an ardent wish to retire from all public employment, I resigned at the late meeting of our Church Convention, my jurisdiction as Bishop of the Protestant Episcopal Church in the State of New-York.

' I am, with great regard,

' Dear and Right Rev. Sir,

' Your affectionate brother,

' SAMUEL PROVOOST.

' Right Rev. Bishop White.'

" A message from the House of Clerical and Lay Deputies was read as follows :—' The House of Clerical and Lay Deputies wish to know from the House of Bishops, whether they have received any communication from Bishop Provoost on the subject of the resignation of his Episcopal jurisdiction in the State of New-York.'

" The House of Bishops having considered the subject brought before them by the letter of Bishop Provoost, and by the message from the House of Clerical and Lay Deputies, touching the same, can see no grounds on which to believe that the contemplated resignation is consistent with Ecclesiastical order, or with the practice of Episcopal Churches in any ages, or with the tenor of the office of consecration. Accordingly, while they sympathize most tenderly with their

brother Bishop Provoost, on account of that ill health, and those melancholy occurrences which have led to the design in question, they judge it to be inconsistent with the sacred trust committed to them to recognize the Bishop's act as an effectual resignation of his Episcopal jurisdiction. Nevertheless, being sensible of the present exigencies of the Church of New-York, and approving of their making provision for the actual discharge of the duties of the Episcopacy, the Bishops of this House are ready to consecrate to the office of Bishop any person who may be presented to them with the requisite testimonials from the General and State Conventions, and of whose religious, moral, and literary character, due satisfaction may be given. But this House must be understood to be explicit in their declaration, that they shall consider such person as Assistant or Coadjutor, Bishop during Bishop Provoost's life, although competent in point of character to all the Episcopal duties; the extent in which the same shall be discharged by him to be dependent on such regulations as expediency may dictate to the Church in New-York, grounded on the indisposition of Bishop Provoost, and with his concurrence.

"The Secretary not being present, Bishop Jarvis is requested to deliver the above as a message to the House of Clerical and Lay Deputies, and to furnish that House with a copy of Bishop Provoost's letter."

"The testimonial from the Convention of the Church in the State of New-York, in favour of the Rev. Dr. Benjamin Moore, as Bishop elect of the Church in that State; and also the testimonial from the House of Clerical and Lay Deputies, now sitting, in favour of the said Dr. Moore, being received and read and found agreeable to the prescribed forms, resolved, that the House of Clerical and Lay Deputies be informed that the Bishops now present are ready to proceed to the consecration of the Rev. Dr. Moore to-morrow morning at ten o'clock."

"The House adjourned, in order to attend the consecration of the Bishop elect of the Church in the State of New-York."

"The Right Rev. Bishop Moore, who was consecrated this morning, appeared in the House and took his seat."

“ The Certificate of the Consecration of the Right Rev. Bishop Moore is as follows.

“ Know all men by these presents, that we, William White, D. D. Bishop of the Protestant Episcopal Church in the State of Pennsylvania, presiding Bishop ; Thomas John Claggett, D. D. Bishop of the Protestant Episcopal Church in the State of Maryland ; and Abraham Jarvis, D. D. Bishop of the Protestant Episcopal Church in the State of Connecticut ; under the protection of Almighty God, in St. Michael's Church, in the city of Trenton, on Friday, the 11th day of September, in the year of our Lord one thousand eight hundred and one, did then and there rightly and canonically consecrate our beloved in Christ, Benjamin Moore, D. D. Rector of Trinity Church in the city of New-York, of whose sufficiency in good learning, soundness in the faith and purity of manners, we were fully ascertained, into the office of Bishop of the Protestant Episcopal Church in the State of New-York ; to which the said Benjamin Moore, D. D. hath been elected by the Convention of the said State, in consequence of the inability of the Right Rev. Bishop Provoost, and of his declining all Episcopal jurisdiction within the said State.

“ In testimony whereof, we have signed our names, and caused our seals to be affixed.

“ Given in the city of Trenton, this eleventh day of September, in the year of our Lord one thousand eight hundred and one.

“ WILLIAM WHITE. L. S.

“ THOMAS J. CLAGGETT, L. S.

“ ABRAHAM JARVIS.” L. S.

Extract from the “ Journal of the Proceedings of the Bishops, Clergy, and Laity of the Protestant Episcopal Church in the United States of America, in a General Convention, held in the city of New-Haven, from May 21, to May 24, A. D. 1811.”

“ Know all men by these presents, that we, William White, D. D. Bishop of the Protestant Episcopal Church in

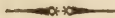
the State of Pennsylvania, presiding Bishop; Samuel Provoost, D. D. Bishop of the Protestant Episcopal Church in the State of New-York; and Abraham Jarvis, D. D. Bishop of the Protestant Episcopal Church in the State of Connecticut; under the protection of Almighty God, in Trinity Church, in the city of New-York, on Wednesday, the twenty-ninth day of May, in the year of our Lord one thousand eight hundred and eleven, did then and there rightly and canonically consecrate our beloved in Christ, John Henry Hobart, D. D. an Assistant Minister of Trinity Church in the city of New-York, of whose sufficiency in good learning, soundness in the faith, and purity of manners, we were fully ascertained, into the office of Bishop of the Protestant Episcopal Church in the State of New-York, to which he hath been elected by the Convention of said State; to assist the Bishops of the Church in said State in the duties of the Episcopal office, and to succeed in case of survivorship.

“ Given in the city of New-York, this twenty-ninth day of May, in the year of our Lord one thousand eight hundred and eleven.

“ WILLIAM WHITE, L S.

“ SAMUEL PROVOOST, L S.

“ ABRAHAM JARVIS.” L S.



Extract from the Journal of the Convention of the Protestant Episcopal Church in the State of New-York, October, 1892, being the first Convention after Bishop Moore's consecration.

“ List of the Clergy and Lay Delegates who composed the Convention.

“ The Right Rev. Benjamin Moore, D. D. Bishop of the Protestant Episcopal Church in the State of New-York; the Rev. Theodosius Bartow, Rector of Trinity Church, New-Rochelle; Abraham Beach, D. D. an Assistant Minister of Trinity Church, New-York; Richard Bradford, Rector of St. Luke's Church, Catskill; Philander Chase,

Rector of Christ Church Poughkeepsie, and Trinity Church Fishkill; Elias Cooper, Rector of St. John's Church, Yonkers; William Harris, Rector of St. Mark's Church, Bowery, New-York; Seth Hart, Rector of St. George's Church, Hempstead; John Henry Hobart, an Assistant Minister of Trinity Church, New-York, John Ireland, Rector of St. Ann's Church, Brooklyn; Cave Jones an Assistant Minister of Trinity Church, New-York."

Extract from the Journal of the Convention of the Protestant Episcopal Church in the State of New-York, October, 1809.

"List of the Clergy and Lay Delegates who attended the Convention.

"The Right Rev. Benjamin Moore, D. D. Bishop of the Protestant Episcopal Church in the State of New-York; the Rev. Parker Adams, Missionary; Amos G. Baldwin, Rector of Trinity Church Utica; Theodosius Bartow, Rector of Trinity Church, New-Rochelle; Abraham Beach, D. D. an Assistant Minister of Trinity Church, New-York; Nathanael Bowen, Rector of Grace Church, New-York; David Butler, Rector of St. Paul's Church, Troy, and Trinity Church, Lansingburgh; Abraham L. Clarke, Rector of St. James's Church, Newtown; Elias Cooper, Rector of St. John's Church, Yonkers; Henry I. Feltus, Rector St. Ann's Church, Brooklyn; Seth Hart, Rector of St. George's Church, Hempstead, with which is connected Christ Church, North-Hempstead; Samuel Haskill, Rector of Christ Church, Rye; John Henry Hobart, D. D. an Assistant Minister of Trinity Church, New-York; Thomas Y. How, an Assistant Minister of Trinity Church, New-York; Cave Jones an Assistant Minister of Trinity Church, New-York; Jonathan Judd, Rector of St. John's Church, Johnstown, and St. Ann's Church, Fort-Hunter; Thomas Lyell, Rector of Christ Church, New-York; Richard C. Moore, D. D. Rector of St. Stephen's Church, New-York."

"The Convention adjourned.

"BENJAMIN MOORE, D. D. Bishop of the Protestant Episcopal Church, New-York.

"Attested,

"JOHN H. HOBART, Secretary to the Convention."

Extract from the Journal of the Convention of the Protestant Episcopal Church in the State of New-York, October, 1810.

“ List of the Clergy and Lay Delegates who attended the Convention.

“ The Right Rev. Benjamin Moore, D. D. Bishop of the Protestant Episcopal Church in the State of New-York; the Rev. Parker Adams, Missionary; Amos G. Baldwin, Rector of Trinity Church, Utica; Abraham Beach, D. D. an Assistant Minister of Trinity Church, New-York; Nathanael Bowen, Rector of Grace Church, New-York; Barzillai Bulkley, Rector of St. George's, Flushing; Elias Cooper, Rector of St. John's Church, Yonkers; Henry I. Feltus, Rector of St Ann's Church, Brooklyn; William Harris, Rector of St. Mark's Church in the Bowery, New-York; Seth Hart, Rector of St. George's Church, Hempstead, with which is connected Christ Church, North-Hempstead; Samuel Haskill, Rector of Christ Church, Rye; John Henry Hobart, D. D. an Assistant Minister of Trinity Church, New-York; Thomas Y. How, an Assistant Minister of Trinity Church, New-York; Cave Jones, an Assistant Minister of Trinity Church, New-York; Thomas Lyell, Rector of Christ Church, New-York; Richard C. Moore, D. D. Rector of St. Stephen's Church, New-York.”

“ The Convention adjourned.

“ BENJAMIN MOORE, D. D. Bishop of the Protestant Episcopal Church in the State of New-York, and President of the Convention.

“ Attested, JOHN HENRY HOBART, Secretary.”

Extract from the Journal of the Convention of the Protestant Episcopal Church in the State of New-York, 1811.

“ List of the Clergy and Lay Delegates who attended the Convention.

“ The Right Rev. John Henry Hobart, D. D. Assistant Bishop of the Protestant Episcopal Church in the State of New-York; the Rev. Abraham Beach, D. D. Assistant Rector of Trinity Church, New-York; John Bowden, D. D.

Professor of Rhetoric and Moral Philosophy in Columbia College; Nathanael Bowen, Rector of Grace Church, New-York; Barzillai Bulkley, Rector of St. George's Church, Flushing; David Butler, Rector of St. Paul's Church, Troy, and Trinity Church, Lansingburgh; Elias Cooper, Rector of St. John's Church, Yonkers; Henry I. Feltus, Rector of St. Ann's Church, Brooklyn; William Harris, D. D. Rector of St. Mark's Church, in the Lowery, New-York; Seth Hart, Rector of St. George's Church, Hempstead, with which is connected Christ Church, North-Hempstead; Samuel Haskill, Rector of Christ Church, Rye; Thomas Y. How, an Assistant Minister of Trinity Church, New-York; Cave Jones, an Assistant Minister of Trinity Church, New-York; Thomas Lyell, Rector of Christ Church, New-York; R. C. Moore, D. D. Rector of St. Stephen's Church, New-York; Davenport Phelps, Missionary in the western parts of the State; Joseph Prentice, Rector of Trinity Church, Athens; John Reed, Rector of Christ Church, Poughkeepsie; Samuel Fuller, Missionary."

The Convention adjourned.

"JOHN HENRY HOBART, D. D. Assistant Bishop of the Protestant Episcopal Church in the State of New-York, and President of the Convention.

"Attested, THOMAS LYELL, Secretary."

Extract from the Journal of the Convention of the Protestant Episcopal Church in the State of New-York, 1812.

"List of the Clergy and Lay Delegates who attended the Convention.

"*Clergy.* The Right Rev. John Henry Hobart, D. D. Assistant Bishop of the Protestant Episcopal Church in the State of New-York; the Rev. Amos G. Baldwin, Rector of Trinity Church, Utica; Theodosius Bartow, Rector of Trinity Church, New-Rochelle; Abraham Beach, D. D. Assistant Rector of Trinity Church, New-York; William Berrian,

an Assistant Minister of Trinity Church, New-York; Nathanael Bowen, Rector of Grace Church, New-York; John Bowden, D. D. Professor of Rhetoric and Moral Philosophy in Columbia College; Barzillai Bulkley, Rector of St. George's Church, Flushing; Orin Clark, Deacon, Missionary; Elias Cooper, Rector of St. John's Church, Yonkers; Henry I. Feltus, Rector of St. Ann's Church, Brooklyn; Samuel Fuller, Missionary; William Harris, D. D. Rector of St. Mark's Church, in the Bowery, New-York; Samuel Haskill, Rector of Christ Church, Rye; Seth Hart, Rector of St. George's Church, Hempstead; Thomas Y. How, D. D. an Assistant Minister of Trinity Church, New-York; Thomas Lyell, Rector of Christ Church, New-York; Richard C. Moore, D. D. Rector of St. Stephen's Church, New-York; Daniel Nash, Rector of St. John's Church, Otsego, St. Luke's, Richfield, and Harmony Church, Butternutts, and other Churches in Otsego county; Joseph Perry, Rector of St. Paul's Church, Ballston Spa, and St. James's, Milton; Joseph Prentice, Rector of Trinity Church, Athens, and Christ Church, Hudson; John Reed, Rector of Christ Church, Poughkeepsie; Isaac Wilkins, D. D. Rector of St. Peter's Church, Westchester, and St. Paul's Church, Eastchester.

“ The following Clergy, not regularly entitled to seats, were admitted to the sittings of the Convention :

“ The Rev. Nathan B. Burges, of Caroline Church, Brookhaven, Long-Island; Edmund D. Barry, Principal of the Protestant Episcopal Academy, New-York; John M'Vicar, of St. James's, Hyde-Park; Timothy Clowes, Deacon, St. Peter's Church, Albany; Samuel Jarvis, St. Michael's Church, Bloomingdale, and St. James's, Hamilton-Square; John Brady, Deacon, St. George's Church, New-York; Ralph Williston, Zion Church, New-York; Birdseye G. Noble, Deacon, St. George's Church, Hempstead; Gilbert H. Sayre, Grace Church, Jamaica; William Powell, Deacon, St. Andrew's Church, Coldenham; Benjamin T. Onderdonk, Deacon, New-York; William E. Wyatt, Deacon, St. James's Church, Newtown, Long-Island; John C. Rudd, of Elizabethtown, New-

Jersey; Adam Empie, of Wilmington, North-Carolina; John V. Bartow, of Savannah, Georgia; Theodore Dehon, D. D. Bishop elect of the Church in South-Carolina.

“ Lay Delegates. Trinity Church, New-York, Richard Harison, David M. Clarkson, Robert Troup, Thomas L. Ogden; Grace Church, New-York, John Slidell, Wright Post, David B. Ogden; Christ Church, New-York, George Dominick, Thomas Harvey; St. Mark’s, Bowery, New-York, Mangle Minthorne, Edward Lyde, Andrew Ogden; Du St. Esprit, New-York, Cadwallader D. Colden, John Pintard, John B. Church; St. Stephen’s, New-York, Henry Pope, Tunis Bergh, David Marsh, John Pollion; St. Michael’s, Bloomingdale, New-York, Valentine Nutter, William A. Davis, Frederick Depeyster, Isaac Jones; St. James’s, Hamilton-Square, New-York, Martin Hoffman, Peter Schermerhorn; Zion Church, New-York, John P. Ritter, Joseph Graff, Lazarus Beach; Christ Church, Poughkeepsie, John Davis, David Brooks; St. James’s, Newtown, Timothy Roach, John Ebbitts; St. Ann’s, Brooklyn, James B. Clarke, William Gregg, John Cornell; St. George’s, Flushing, Richard Platt; Trinity Church, Fairfield, Andrew A. Bartow; Christ Church, Hudson, William E. Norman; Trinity Church, Geneva, Thomas Lowthrop; Grace Church, Jamaica, Rufus King; St. George’s, Hempstead, Benjamin Treadwell, — Hewlet; Trinity Church, New-Rochelle, David Coutant, Theophilus Bartow; St. James’s Church, Goshen, William Thompson, George D. Wickham; St. John’s Church, Yonkers, Henry White, Elijah Valentine; Trinity Church, Fishkill, Daniel C. Verplanck; Christ Church, Rye, Peter J. Munro, John P. Delancey; St. Luke’s Church, Catskill, William Seaman; Trinity Church, Utica, Morris S. Miller; St. James’s, North-Salem, Joshua Purdy; St. Andrew’s Church, Staten-Island, Joseph Bedell, Alexander Carnes, John Vandyke; St. James’s Church, Hyde-Park, Samuel Bard, Nathaniel Pendleton; Christ Church, Cooper’s Town, Isaac Cooper; St. George’s Church, Newburgh, David Fowler, Thomas Farmer; Grace Church, Waterford, John Vibbard; St. Peter’s Church, Stamford, Joseph D. Bears; St. Peter’s

Church, Westchester, Abijah Hammond, Richard V. Morris; St. Paul's Church, Eastchester, Isaac Ward; St. Peter's, Pultneyville, Henry Laight; Trinity Church, Athens, Delucena Backus; St. George's Church, New-York, Harry Peters, G. H. Van Wagenen, Francis Dominick, Edward W. Laight; St. Matthew's, Unadilla, Curtis Noble."

" A letter from the Right Rev. Bishop Provoost, addressed to the Rev. Clerical, and to the Lay Members of the Convention of the Protestant Episcopal Church in the State of New-York, was read, which is as follows, viz.

' To the Rev. Clerical, and to the Lay Members of the Convention of the Protestant Episcopal Church in the State New-York.

' BRETHREN,

' This being the day appointed by our Church for your Convention, I think proper to address you.

' You well know that in the year 1801 I proffered to the State Convention a resignation of my jurisdiction as Bishop of this Diocese, and that immediately afterwards I communicated to the General Convention, then in session at Trenton, information of the step I had taken. For a long time I fully believed that my act of resignation was recognized as effectual. But having some time since become acquainted with the proceedings of the State and General Conventions in relation to this subject, and feeling a due respect for the sentiments of the General Convention, so strongly and decisively expressed in the resolution of the House of Bishops of the 7th of September, 1801, I think it my duty to inform you, that though it has not pleased God to bless me with health that will enable me to discharge all the duties of a Diocesan, and for that reason I cannot now attend the Convention; yet I am ready to act in deference to the resolution above mentioned, and to concur in any regulations which expediency may dictate to the Church; without which concurrence I am, after the resolution of the House of Bishops, bound to consider every Episcopal act as unauthorized.

With my earnest prayers to Almighty God for the prosperity and peace of our Church, for the spiritual welfare and temporal happiness of all its members,

‘ I am, my dearly beloved Brethren,

‘ Your affectionate Father in God,

‘ SAMUEL PROVOOST,

‘ Bishop of the Protestant Episcopal Church in the State of New-York, and Diocesan of the same.

New-York, 6th Oct. 1812.’

‘ Whereupon the following resolutions were proposed and considered :

‘ Whereas by the constitution of this Church the right of electing the Bishop thereof is vested in, and appertains to the Convention of this State : And whereas the jurisdiction of the Bishop of the Protestant Episcopal Church as the Diocesan thereof may be resigned, although the spiritual character or order of the Bishop is indelible ; and such resignation, when the same is accepted by the Convention, creates a vacancy in the office of Diocesan Bishop of the Protestant Episcopal Church in this State : And whereas the Right Rev. Samuel Provoost, D. D. being then the Diocesan Bishop of the said Church in this State, did, on the third day of September, in the year of our Lord one thousand eight hundred and one, resign his Episcopal jurisdiction of this Diocese to the Convention of the said Church in this State ; and the said Convention did, on the next day, accept the said resignation, and, on the following day, proceeded to the choice, by ballot, of a person to succeed the said Diocesan Bishop ; and thereupon the Rev. Benjamin Moore, D. D. was unanimously chosen by the Clergy and Laity, and received from them, as Bishop elect, of this Church, the testimonial required by the Canon of the General Convention : and whereas the said Benjamin Moore was, on the eleventh day of the said month of September, rightly and canonically consecrated into the office of Bishop of the said Church, and from that time hath exercised the powers and jurisdiction of Diocesan Bishop in this State : And whereas this Convention hath been given to understand that doubts have been entertained

whether the office and jurisdiction of Diocesan Bishop became vacant by the said resignation and acceptance thereof, and whether the said Benjamin Moore was of right the Diocesan Bishop of the said Church in this State by virtue of the election and consecration herein before mentioned : And whereas this Convention hath further understood that since the last Convention the said Bishop Provoost hath assumed, and by his letter this day read in Convention does claim, the title and character of Diocesan Bishop :—Now, therefore, in order to obviate the said doubts, and with a view to restore and preserve the peace and order of the Church, this Convention doth hereby resolve and declare,

‘ That the Right Rev. Samuel Provoost, from and immediately after the acceptance of his resignation by the Convention of the Church in this State, ceased to be the Diocesan Bishop thereof, and could no longer rightfully exercise the functions or jurisdiction appertaining to that office ; that having ceased to be the Diocesan Bishop as aforesaid, he could neither resume, nor be restored to that character by any act of his own or of the General Convention, or either of its houses, without the consent and participation of the said State Convention, which consent and participation the said Bishop Provoost has not obtained ; and that his claim to such character is therefore unfounded.

‘ And further this Convention doth declare and resolve, that the spiritual order of Bishop having been canonically conferred upon the said Benjamin Moore, he became thereby, in consequence of the said previous election, *ipso facto*, and of right, the Diocesan Bishop of the Protestant Episcopal Church in this State, and as such, well entitled to all the jurisdiction and pre-eminence belonging to that office, and which have been, and may be, canonically exercised by him personally, or through his Coadjutor, in the said character.

‘ And this Convention, in their own names, and for the Protestant Episcopal Church in this State, do hereby solemnly declare and acknowledge the said Benjamin Moore, and no other person, to be their true and lawful Diocesan Bishop ; and that respect and obedience ought of right to be paid to him as such.’

" The question on the passage of the above resolutions being taken, they were carried in the affirmative.

" **YEAS.—Clergy.** The Rev. Amos G. Baldwin, Theodosius Bartow, Abraham Beach, D. D. William Berrian, Nathanael Bowen, John Bowden, D. D. Barzillai Bulkley, Orin Clark, Elias Cooper, Samuel Fuller, Samuel Haskill, Seth Hart, Thomas Y. How, D. D. Thomas Lyell, Daniel Nash, Joseph Prentice, John Reed, Isaac Wilkins, D. D.

" *Laity.** St. Andrew's Church, Staten-Island, a church and chapel; St. George's Church, Hempstead, a church and chapel; Grace Church New-York; Christ Church, New-York; Du St. Esprit, New-York; Trinity Church, New-York, a church and two chapels; St. Mark's Church, Bowery New-York; St. Stephen's Church, New-York; St. James's Church, New-York; St. Ann's Bhurch Brooklyn; St. George's Flushing; Trinity Church Fairfield; Christ Church, Hudson; Trinity Church, Geneva; Grace Church, Jamaica; Trinity Church New-Rochelle; St. James's Church, Goshen; St. John's Church, Yonkers; Christ Church, Rye; St. Luke's Church, Cattskill; Trinity Church, Utica; St. James's Church, Hyde-Park; Christ Church, Cooper's Town; St. Peter's Church, Stamford; St. Peter's Church, Westchester; St. Peter's Church, Pultneyville; Trinity Church, Athens; St. George's Church, New-York; St. Matthew's Church, Unadilla.

" **NAYS.—Clergy.** None.

Laity. St Michael's Church, Bloomingdale; Trinity Church, Fishkill.

" St. George's Church, Newburgh, divided.

" The Rev. Dr. Moore, the Rev. Dr. Harris, and the Rev Mr. Feltus, were excused from voting, and expressed their determination to submit to the decision of the Convention.

* " *Agreably to the 7th article of the Constitution of this Church the Laity voted by congregations; and when more than one Church or Chapel is united under one Vestry, the Delegate or Delegates of such Vestry is entitled to a vote for each Church or Chapel.*"

"The Delegate from St. James's Church North-Salem, was also excused from voting.

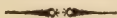
"On motion, resolved, that copies of the letter from the Right Rev. Bishop Provoost, addressed to the Clerical, and to the Lay Members of the Convention of the Protestant Episcopal Church in the State of New-York, and of the above resolutions, be sent to the Right Rev Bishop Moore, the Diocesan of the Church in this State, and to the Right Rev. the Bishops of the Protestant Episcopal Church in the United States; and also a copy of the resolutions to the Right Rev. Bishop Provoost."

"The Convention adjourned.

"JOHN HENRY HOBART, D. D.

"Assistant Bishop of the Protestant Episcopal Church
in the State of New-York.

"Attested THOMAS LYELL, Secretary."



Mr. Emmet having read the bond between the Rector and Inhabitants of the city of New-York, in Communion of the Protestant Episcopal Church in the State of New-York, and the Rev. Cave Jones, C. D. Colden, Esq. on the part of the plaintiff, proceeded to open the cause.

MR. COLDEN.

May it please your Honors,

IT appears from the instrument just read, that Mr. Jones was called by the vestry of Trinity Church to officiate as one of their assistant ministers, in January 1801. He continued faithfully and zealously to discharge the duties of that office until November 1810. At that time certain proceedings were instituted against him under a canon of the church, which have terminated in a sentence of suspension, which has excluded him from the exercise of the functions of his holy office in this diocese, as well as in every state in the Union.

By this means he has not only been degraded in his profession, but has been deprived of the means of gaining a

support for himself or for his family. It is now to be decided by your honors, whether these proceedings, which have been attended with such direful consequences to Mr. Jones and his unfortunate family, are sanctioned by the laws of the church or the laws of the land.

In the course of what has heretofore passed in relation to this cause, your honors have thought it necessary to caution those who were to appear before you, from indulging an undue warmth. If at any time, I have imposed too little restraint on my feelings, I am most sincerely sorry for it. I well know that any intemperance, upon an occasion like this, and before such a tribunal, can only injure myself and can do my client no good. It is true, I rise under the most animated and zealous feelings. But, if I know myself, they are disinterested feelings. Until this controversy, I have had the honor to know but very little of any of the parties concerned in it. I have taken up the cause of Mr. Jones, because I did believe, and I persevere in it, because I do believe him to be an injured, oppressed and persecuted man. But though it is in vain for me to promise to preserve that calmness of manner, which I often envy in others, I trust I shall not transgress those bounds of moderation, which the nature of this controversy and a due respect for the characters implicated in it, seems to preclude.

The first question, which presents itself for the consideration of the arbitrators is, whether the call of Mr. Jones was for life or during good behaviour? or whether it was to be considered as placing Mr. Jones at the will of the vestry, and to be dismissed at their pleasure? We contend, that the call was for life, and that Mr. Jones could not be dismissed until legally convicted of some misdemeanor, which might render him unworthy to discharge the duties of his office. But the vestry have uniformly shrunk from an investigation of Mr. Jones's conduct. His very enemies have been obliged to bear witness to his irreproachable character, and to the purity and zeal with which he has served as a minister of the church. It is for this reason, (as will by and by be explained) that they have adopted a course, by which they have

hoped to destroy, without affording him, an opportunity for vindication or defence, and even without an accusation.

The letter of call of Mr. Jones is in the following words :

REV. SIR,

We are commissioned by the vestry of Trinity Church to inform you, that you are invited by a vote of that board, passed this day, to accept the office of an assistant minister in the churches under their care, upon the same terms on which the other assistant ministers are placed: the salary is five hundred pounds per annum. We are further to remark, that it is required that you (in conjunction with the Rev. Mr. Hobart) perform divine service in one of the churches on Sunday evenings.

We are, Rev. Sir,

Your very humble servants,

JOHN CHARLTON,
ANDREW HAMERSLEY, } Committee.
HUGH GAINÉ,

Jan. 14, 1801.

The Rev. CAVE JONES.

As there is nothing in this letter, which prescribed any limits to Mr. Jones's engagement, I presume, without any other evidence, it would be taken as a call for life or good behaviour. But testimony shall not be wanting on this point; we shall prove by ministers of the church, that from the first establishment of the office of assistant ministers, they have always been considered as holding their offices for life or during good behaviour. But the most satisfactory evidence on this point, will be the confession or admission of the vestry itself: they have most unequivocally admitted, that Mr. Jones held his office upon the terms for which we contend. On the 5th of September, 1811, the vestry adopted the report of a committee, in relation to Mr. Jones, in which report are the following words :

“ Two modes by which this connection may be dissolved, have occurred to the committee. First—From the nature and terms of the engagement between the vestry and the

“Rev. Mr. Jones, there can be little doubt that the same
 “may, for sufficient cause, be dissolved by either party; it
 “being presumed, that the canons of the church do not affect
 “contracts which had been previously made.”

Now is not this an explicit acknowledgement on the part of the vestry, that their contract with Mr. Jones was of such a nature, that it could not be dissolved at the mere will and pleasure of either party; but on the contrary, that it could not be dissolved without sufficient cause?

Did any cause exist that would justify the dismissal of Mr. Jones? The enquiry has never been made—the vestry have most carefully avoided a course which would induce such an enquiry. And their anxious desire to avoid such a course, has led to the proceedings which they have instigated. This is a secret of these transactions, which the arbitrators must understand, before they can be acquainted with the merits of this case. As Mr. Jones’s call was for life, or during good behaviour, had the vestry dismissed him, when he should have brought a suit against them for his salary, they could only have justified themselves by proving his misconduct. To avoid which they resort to this canon of the church. And while even those who stand as his prosecutors are obliged to acknowledge that he has faithfully, piously and zealously performed his duty, they procure the sentence of an ecclesiastical tribunal which disqualifies him to discharge the duties of his office. And now if he should sue the vestry on his contract, they would answer his suit by saying, we have not dismissed you: we do not hinder you from serving us; but your presbyters and bishop have rendered you incapable of performing your part of the contract—Why did not the vestry prefer a course which was so manifestly more candid and generous? Why did they not dismiss him? And then fairly meet the question whether they had sufficient cause for doing so. But no! the bishop and his presbyters would save them from all responsibility. And under the forms of ecclesiastical law, this unfortunate gentleman and his unoffending and helpless family were to be sacrificed, and doomed to poverty and want, while his persecutors have, with a sort of triumph, declared, that they had no accusations to make a-

gainst him ; and indeed that he never was accused.—It is only expedient, they say, that he and his family should suffer for the good of the church, while his enemies live in the enjoyment of its richest blessings.

Let me now ask the attention of the arbitrators, while I present to them a history of the proceedings, which have taken place against Mr. Jones, and examine on what grounds and by what authority it is pretended they are justified.—They all rest upon the 32d canon* of the Episcopal Church of the United States, which was passed in the year 1803.

This canon, we contend, does not apply to the case of Mr. Jones, for a variety of reasons ; and these I shall now submit to the consideration of the arbitrators ; first, because it was passed after Mr. Jones's call.—It would seem without any further reasoning, to be manifest that a contract, between Mr. Jones and the vestry, cannot be affected by any act of the church passed subsequently to that contract, much less can it be affected by any proceeding, to which the vestry were a party in hostility to Mr. Jones. But this point the vestry seem also to have settled for us. In their zeal to resolve enough against Mr. Jones, they have resolved something in his favour.—The latter part of the resolution of the 5th of September 1811, which I have before read, is as follows : “ It being presumed, that the canons of the church do not affect contracts which had been previously made.” Can there be a plainer acknowledgement, that Mr. Jones's contract was not to be affected by any canon which was passed subsequent to his call. And yet in the very next breath, in the very same report, they resolve to institute proceedings, which are to end in the entire annihilation of his contract, under this thirty-second canon which was passed years after Mr. Jones's call. Is it not most astonishing, that such inconsistency should display itself on an instrument of this kind, and in a controversy of this nature !

Again, this canon does not apply to the case of Mr. Jones, because it provides that it “ *shall not be obligatory upon those states or dioceses, with whose usages, laws or charters it inter-*

* See Page 21.

fers." Now we shall shew, that to apply this canon to the church in this state, would be interfering with its usages, because it has been the immemorial usage to consider every clergyman who had a general call as settled for life or during good behaviour. To make therefore his contract or his living not dependent on his good behaviour, but on the will of a tribunal which may be convened under this canon, is to apply the canon here, where it is inconsistent with our usages. As to this usage, we shall bring irrefragable evidence, and prove that it has existed since the church has had an existence in our country. Before the war, the question was agitated and settled conformably to what has ever been the general usage.

Again, the canon, as will be seen by a reference to it, does not apply in any case to controversies between assistant ministers and their vestries: and as Mr. Jones is an assistant minister, and the controversy is alleged to have existed between him and the vestry of Trinity Church, (if there were in fact such a controversy) it forms a case to which the canon can have no application. To understand this objection, the arbitrators are to observe that assistant ministers are not mentioned in the former part of the canon. It speaks only of controversies "*between ministers* who now or thereafter may hold the rectorship of churches or parishes, or the vestry or congregations of such churches or parishes, which controversies are of such a nature," &c. In the subsequent part of the canon, it is declared that it shall apply "to the cases of associated rectors and assistant ministers and their congregations" only. So that though a controversy between a rector and his vestry may be the grounds of a proceeding under the canon; yet a controversy between an assistant minister and a vestry can afford no such grounds. For as to an assistant minister, the controversy must be with the congregation, and not with the vestry.

And do not let it be supposed, that this was a mere error in the drafting of the canon. When we recollect the gravity, wisdom and learning of those by whom the affairs of our church are managed, we are not lightly to admit a suggestion that implies any carelessness or want of intention in any

thing that is done, much less in a solemn act of this nature. And it is obvious that it is not here to be admitted, because there are the most solid reasons for the distinction which the canon makes between the two cases. A rector is not only a member of every vestry, but is the head, without which it cannot act. If therefore there be any difference or dispute between a rector and his vestry, it may be very necessary to have an appeal to some other independent body. But between a vestry and an assistant minister, there is no connection whatever: all his connections are with the congregation. He is their servant: and if they have differences or controversies they may proceed under the canon; but the vestry may not. Is it not reasonable to suppose that the reverend divines, who had a voice in the enacting of these canons, had some regard to the independence of their brethren, who might be placed in the subordinate situations of assistant ministers, and did not mean to leave them subject to the caprice of bodies changeable every year as vestries are, and who by partiality, pride, prejudice, or the undue influence of an angry and resentful enemy, might create controversies, to make them the foundations of appeals to the bishop. The canon has not put, and did not mean to put, assistant ministers thus at the mercy of a vestry. But their connection is only with the congregation; and as they would for ever be in the eyes of the congregation and not of the vestry alone, the power of complaining is left in the case of assistant ministers with the congregation and not with the vestry.

Now between Mr. Jones and the congregation, there never has been a controversy, much less has there been any appeal by them to the bishop. How then can this canon have authorized the proceedings, which have fallen so heavily on Mr. Jones and his unfortunate family?

Waiving, however, for the present, the consideration of these objections to the applicability of the canon to the case of Mr. Jones, let us turn to other passages in the ecclesiastical law, which will show most manifestly, that to make it reach the case of Mr. Jones, and to make it the instrument of his destruction, it has been most miserably distorted. The canon could have no application until there was a case of contro-

versy between Mr. Jones and the congregation ; or, for the sake of argument, let us say until there was a controversy between Mr. Jones and the vestry. I have said there never was any such controversy : and we shall by and by satisfy the arbitrators that there was not. The real controversy, if any did exist, was of a much more personal nature. But, to pass over this for a moment, the canon further provides, that "*the controversy must be of such a nature as cannot be settled by the parties themselves,*" and when it "*has proceeded such lengths, as to preclude all hope of its favourable termination,*" then the canon authorises the bishop and his presbyters to interfere, and on certain terms, to dissolve the connection. Does it not most manifestly appear, that it was intended, that there should be no proceedings under this canon, until the parties to a controversy had made some efforts to settle it themselves ; and until by such efforts, it had been ascertained that there was no room to hope for an amicable termination ? But what was the conduct of the vestry ? A majority of them took offence at Mr. Jones. They resolved that a controversy existed within the meaning of the canon, without having the slightest communication with him ; without letting him know that they had a controversy with him ; without asking him to settle that controversy which they had resolved did exist ; without enquiring whether there might be hopes of its favourable termination. Under some most extraordinary influence, as much in violation of their Christian duties as of the laws of their church, they at once resort to these cruel proceedings against my unfortunate client. If we lay the injunctions of the canon in this respect out of view, let us ask, was it not the duty of these gentlemen, not only as men but as Christians, as servants in a Christian church, to have endeavoured to be reconciled with their offended or offending brother, before they instituted proceedings, which they must have foreseen, would, and which they doubtless must have intended should, end in his ruin ?

But it will be said a controversy did exist between Mr. Jones and the vestry ; and though it must be acknowledged, that no effort was ever made to settle it between the parties ; yet it will be contended, that it had proceeded to such lengths

as to preclude all hopes of a favorable termination : and consequently, Mr. Jones became obnoxious to the provisions of the canon. It becomes necessary, therefore, to enquire what the controversy was? And I think there will be no difficulty in satisfying the arbitrators, that instead of there having been a controversy between Mr. Jones and the vestry or the congregation ; it was a controversy between Mr. Jones and his Rev. colleagues, the Rev. Dr. Hobart and the Rev. Dr. Howe, or rather between these gentlemen and most of their clerical brethren of this parish. Mr. Jones and his family now suffer, not because he has had any difference with his vestry or congregation, but because he has had the temerity to offend these two gentlemen.

In the year 1789 or 1790, bishop Provoost became the bishop of this diocese. In the year 1801, bishop Moore was consecrated. In the spring of 1811, although we were blessed with *two* bishops, it was deemed indispensably necessary that we should have a *third*. Mr. Hobart became the open and avowed candidate for that office. I assert without fear of contradiction, that Dr. Hobart was the avowed candidate for the Episcopacy. Mr. Jones, aware of the intrigues that were progressing, and intimately acquainted with the disposition and character of Dr. Hobart, did not consider him the most proper person for that exalted station. Believing that others could be found, equally competent and more meritorious, he considered it his duty to develope the facts upon which he founded his opinion, and accordingly published his "Solemn Appeal," which has been made the foundation of all the proceedings against him ; to some extracts from which, I now request the attention of the arbitrators.

"The second occurrence," says Mr. Jones, in his Solemn Appeal, "was at the funeral of Mr. Walton. This was, I believe, about two years after the former transaction. I had been desired by the bishop to visit and supply the churches in the county of Orange. I consented, provided my place in the city could be supplied. The bishop said it was reasonable that my duties here should be discharged, when I was performing the general duties of the church in another quarter ; and remarked that he did not doubt that my brethren in the

city would discharge my parochial duties in my absence, so that I should not have to perform additional service on my return. He said moreover, that for his part, he would take his turn to officiate for me; and doubted not our colleagues would do the same, if I should apply to them. Some short time after, my wife was quite indisposed; and it was deemed advisable that she should take a little tour up the country. I proposed accordingly to accompany her to the springs on the first convenient opportunity; and began to make arrangements in my mind for carrying the two objects conjunctly into effect. About this time it happened, I do not know exactly by what means, except it was by the shutting up of one of the churches, that I had two vacant Sundays in succession. These, or rather the intermediate time, I thought of devoting to the waiting on my wife; and two others, provided the bishop's proposition should succeed, to visiting the churches mentioned. At the time above referred to, just as we were taking our stations before the corpse, I mentioned these circumstances to Mr. Hobart; and asked him, if he would supply my place one Sunday, as the bishop would the other? He said, no, he would not; that he had no notion of doing my duty without a return; that he would be willing to do it for any other person; but that I was always very exact in requiring an equivalent for offices rendered. I replied, that the proposition made appeared to be strictly just, that while I was doing the duties of the church elsewhere, I should have my place supplied here; that the proposition was at the suggestion of the bishop, and rested with himself to adopt or not. He said, I might take my own Sundays, without infringing on the privileges of my brethren. I gave the reason above referred to, for making a different arrangement. He said, he did not doubt I would be very willing to supply other churches, if I could get rid of my labours here; and that any of the clergy would be willing to do the same. I then offered to supply his place, if he would do what I had proposed. He said, no; he did not wish to leave the city. This was the substance of our conversation, the whole of which I do not recollect; but it lasted without intermission from the door of Mr. Walton, in the upper end of Pearl-Street, till we arrived at the door of

Trinity Church; during which time, I frequently urged that the matter rested entirely with himself to adopt or not; and we had therefore better say no more about it. Throughout the whole, Mr Hobart, with considerable heat, and with somewhat of biting sarcasm, plainly arraigned the reasonableness of my request, and the purity of my motives; and I was involuntarily compelled to plead in my own defence."

Let me again remind the arbitrators, that this was a publication made on the eve of an election, at which Mr. Hobart was, as I have said, an avowed candidate for the office of bishop; and if only a very small portion of the facts detailed in this work are true, is Mr. Jones reprehensible for disclosing them to the convention and to the world? Nay, was it not his duty to do so? Let us remember when this scene passed. It was when Dr. Hobart was attending the funeral of one of our most venerable and respectable citizens; when he was followed by the weeping relatives and friends of the deceased; at such a time and on such an occasion, he commences a quarrel with his colleague, as to the share he should take in the performance of the sacred duties of his office. He continues "his heat and biting sarcasm," till he arrives at the door of the church, and is obliged to restrain his anger, to pronounce the solemn words of the burial service. Is it wonderful, that Mr. Jones thought such conduct betrayed a character unfit for the high and holy office, to which Dr. Hobart aspired? Could Mr. Jones, knowing these things, perform his duty to that church, of which he was a member, without publishing them to those who were about to elevate Dr. Hobart to this high and dignified office?

Among other causes of dissention, it appears that a controversy existed respecting the Rev. Mr. Richard C. Moore. Dr. Hobart, Mr. Howe, and Mr. Lyell, believing that one course ought to be pursued towards this gentleman, for what was deemed by them irregularities; Mr. Jones and some others of the clergy thinking, that a more mild and conciliating line of conduct ought to be adopted. Anxious for the peace and harmony of the ministry, Mr. Jones wrote the following letter, dated May 14th, 1810.

“ Rev. and Dear Sir,

“ As the subject of an exchange of official duties with the Rev. Dr. Richard C. Moore, has been matter of conversation between us on a former occasion; I deem it proper, before I carry into effect the line of conduct which I intend to pursue, to apprise you of my intention and my reasons, in order that I may not seem to act, as I certainly do not act, from a spirit of opposition to you. You will therefore receive this communication as a pledge of my disposition to friendliness. And I have adopted the present mode of conveyance, in order to avoid any irritation of temper, which might possibly arise from a personal interview.

“ Towards Dr. Moore, I wish and I intend only to pursue the same line of conduct, which I should feel it my duty to pursue towards any other clergyman in the same situation, and under similar circumstances. To such I do really feel myself bound, without regard to personal attachment or partiality, to treat them with friendliness, to regard them as brethren, and as such, to render them all the good offices in my power, particularly by an indiscriminating interchange of official duties, as long as they do not glaringly violate the rules and orders of the church. In matters which are not provided for, by these standing rules and orders, I do not feel a right to set myself up as a judge.

“ By this principle, my conduct towards Dr. Moore has hitherto been regulated. It has always appeared to me, that whatever tendency to irregularity he might be supposed to possess, would be most likely to be corrected by a mild and friendly deportment towards him:—that this would most readily seize his affections; and by means of gentle persuasives, would dispose him to adopt such a line of conduct, as might seem correct to us. And you will pardon me, if I offer it as my deliberate opinion, that, had this mode been adopted by all his brethren, on his removal to the city, it would have been a very easy matter, to have prevented entirely his connexion with the private societies. To this connexion, I have uniformly been opposed; not because I

“ thought any rule of the church was violated by holding
 “ societies, as such, alone; but, because, from principle I
 “ disapprove of them. And, although the foundation on
 “ which, as I understood it, this matter was placed by the
 “ bishop, greatly weakened my efforts; yet I never ceased
 “ to urge a discontinuance. And this I was still in hopes to
 “ effect, by a friendly deportment. It was not till some
 “ short time ago, that I understood that the service of the
 “ church was not used at these meetings; and learnt also
 “ from the bishop himself, that he had pointedly expressed his
 “ disapprobation of the manner in which they were conduct-
 “ ed. From that time, I discontinued an interchange of
 “ official duties with Dr. Moore, and assigned to him my
 “ reasons.

“ Since this period, Dr. Moore has pledged himself to me,
 “ that he has at his last meeting, used nothing but the service
 “ of the church, that it is his firm determination to use none other
 “ for the time to come, and that he has notified his people of
 “ such determination. This, in my opinion, alters the ground
 “ entirely. Whatever may be my own private opinion with
 “ regard to the expediency of society meetings—yet, as long
 “ as there is no rule of the church violated thereby, every in-
 “ dependent rector must be left to his own discretion, as to
 “ what is expedient in his own parish. And I certainly have
 “ no right to take into my hands the authority of dictating.
 “ This, I have it from the bishop, is his opinion in the case;
 “ and I shall govern myself accordingly. It is my intention
 “ therefore, to interchange occasionally with Dr. Moore, as
 “ with the rest of my brethren, as long as he shall continue
 “ thus to use none but the service of the church.

“ This intention, will, I trust, be considered apart from all
 “ personal regards. Whatever private misunderstanding may
 “ be between yourself and Dr. Moore, it is not for me to in-
 “ terfere. My wish is, as it is certainly my duty, to act be-
 “ tween you as friends—at least to me; and it would be my
 “ happiness if I could make you such to one another.

“ And now permit me, Rev. Sir, to expostulate with you
 “ on this case, and to beg of you to consider, whether it would
 “ not be for the advantage of the church, that these unhappy

" differences should be brought to a close. It must certainly
 " weaken the influence of our ministry, to have it known that
 " these animosities exist among the clergy ; and it must also
 " undoubtedly be a great cause of rejoicing to those who are
 " the enemies, and who seek the downfall of the church.
 " Surely, when so many are combined against us, we ought
 " ourselves to be united. But independently on all pruden-
 " tial considerations, it will admit of little dispute, that we are
 " loudly called to this union by our duty, both as Christians
 " and as clergymen.

" It really appears to me, that this reconciliation can easi-
 " ly be brought to bear, without any unbecoming submissions
 " on either side. It may now be done without giving publi-
 " city to any of the previous measures ; as what is now writ-
 " ten has been shown to no one, and mentioned to no one,
 " except to one confidential friend ; and is not intended to
 " be shown, unless imperious circumstances shall require.
 " This I mean, however, only as a guide to my own con-
 " duct.

" This letter you will be so good as to communicate to
 " Mr. How, to whom jointly with yourself, it is intended
 " to be addressed. It is sent to you in the spirit of friend-
 " ship, in order to avoid any interruption of that harmony
 " which ought to subsist. At the same time, I beg it may
 " be distinctly understood, that I deprecate no consequences,
 " but that of the commitment of the peace of the church.

" Your brother in Christ,

" CAVE JONES.

Rev. Dr. Hobart.

New-York, May 14th, 1810."

" After the sending of this letter, Dr. Hobart and I met sever-
 " al times in private circles ; on which occasions he was parti-
 " cularly courteous ; but I received no answer, nor any com-
 " munication on the subject on which we had conferred. I had
 " learnt however that he intended to write a letter in answer ;
 " and that it would be of a conciliatory nature, abandoning the
 " ground which he had taken with regard to having no inter-
 " course, and leaving me to act as my judgment or inclination

“ might direct. But on Friday the 15th of June, after prayers,
 “ Dr. Hobart asked me to remain in the vestry room of Trinity
 “ Church, and there introduced the subject and dilated upon it
 “ verbally. He criticised every part of my letter, on which he
 “ had evidently prepared himself; without giving me the same
 “ opportunity; and when I endeavoured to explain, he would
 “ twist my words, and endeavour to fasten upon me unsound-
 “ ness of principle and inconsistency of conduct. This con-
 “ versation led to the very consequences which I endeavoured
 “ to avoid, and which I avowed it to be my object to avoid, in
 “ communicating by letter. It was lengthy and embraced a
 “ vast variety of topics, so that it is almost impossible to re-
 “ member the particulars: and it really would appear to me
 “ that every thing was resorted to, which might have a tenden-
 “ cy to wound my feelings and irritate my temper. So firm was
 “ the impression on my mind at the time, and such was the
 “ tartness and irritating nature of his remarks, that I more
 “ than once was induced to ask him, whether he was seeking
 “ the occasion of a quarrel? This to be sure he disavowed;
 “ and while he was making the most severe remarks on every
 “ part of my character and conduct, he would say, “ I mean
 “ not now to wound your feelings.”—He took a review of the
 “ whole period which has passed since my coming to the city,
 “ (although we had agreed at Mr. Harris’s, on the affair of Mr.
 “ Gillet, to bury every thing in oblivion prior to that event)
 “ and contrasted his friendly deportment, as he mentioned, to-
 “ wards me, to what he charged me with, my unfriendly and
 “ insidious deportment towards him. He brought into view a
 “ variety of little trifling particulars with regard to the question
 “ of precedency; and others which had never been mentioned
 “ between us; and asserted that I had assumed an importance
 “ which did not belong to me, and had infringed upon his right.
 “ This referred as he explained it, on my enquiry to the ques-
 “ tion of precedence at the communion and at funerals; which,
 “ as I then reminded him, had always been arranged between
 “ us by agreement, or by courtesy. But he asserted that al-
 “ though he had the politeness to yield to me, yet I ought to
 “ have had the good sense to have refused. He charged me
 “ with being, if not the principal author, at least a very instru-

“ mental cause of the misunderstanding between him and Dr. Moore, and asserted that I had no pretensions to the offering of myself as a mediator between them. He alleged that on a variety of occasions I had acted as his secret enemy. And after taking a review of the whole ground, as well as at several intervals, while I endeavoured to explain and defend, he would tauntingly say, “ and yet after all this you hold yourself up as perfectly immaculate, a paragon of goodness, altogether qualified to reconcile differences !”—He urged me for the reasons for certain parts of my conduct. If I gave them in general ; he urged me to specify particular facts. If I waved it, he threatened to bind me to proof. Till at length I told him that I wished to avoid any further altercation ; and that I really was obliged to be on my guard ; because I saw that he was disposed to catch at my words, and to twist them to my disadvantage. He talked several times of being able to fasten certain charges on me by proof ; and said that matters were drawing to a crisis, when I would have to answer for my conduct. During the whole of this time, I dare appeal to himself that I acted entirely on the defensive, and that I suffered none of those passions to arise, which might naturally be expected to be excited by the occasion : while on the contrary, he throughout, and particularly towards the conclusion, was warm, impetuous and irritating.

“ June 16th, 1810.

“ *Additional remarks, as they occurred in the ensuing week.*

“ The subjects introduced were so various, and introduced so rapidly, that it is impossible for me to remember the connexion, or indeed scarcely more than the general tenor of the remarks made. I had frequently to request Dr. Hobart to stop and let me correct what he had asserted ; but this was soon impossible : and I perceived that I had only to hear what he had to say ; except when he called upon me for explanations of my past conduct, which we had agreed by his own proposal to bury in oblivion. I therefore made up my mind to oppose nothing ; but merely, when it was impossible to parry it, to soften my own conduct, or give reasons for it. Indeed upon reflection, I am astonished, and almost angry with myself, that I could remain, and re-

“ceive such insulting language and conduct. Once, towards
 “the close, when every thing seemed to have been said, that
 “might reasonably have been expected, I did take my hat
 “and open the door, with intention to leave him; but Dr.
 “Hobart pressed upon me closely, seemingly with intention
 “to prevent me; and upbraided me with unmanliness or
 “want of generosity (and as it now strikes me, of cowardice)
 “for wishing as he said, to avoid giving an explanation of
 “my conduct. At this time it was, that in a threatening
 “manner, and (if I do not greatly mistake) with a brandish
 “of the arm, he said, “I will put you to the proof.” When
 “at the same time I had asserted nothing, but a mere mat-
 “ter of opinion as a reason for my own conduct, after being
 “repeatedly pressed, having endeavoured to parry it; and
 “when he was urging me for specific charges, evidently with
 “intention to form a ground of complaint. At a very early
 “part of the conversation, I found that he was disposed to
 “take advantage of every thing which I should say. I therefore
 “endeavoured to be as guarded as possible. For this pur-
 “pose I determined to make use of the mildest terms in my
 “power, and those which would be the least liable to objection.
 “These he would still play upon; and from them endeavour
 “to involve me in absurdity. And if in any subsequent part,
 “I made use of different terms, he charged me with prevari-
 “cating; and he would repeat over the terms, and add,
 “For I know not how to understand you.” In fact I had all
 “along endeavoured to avoid an investigation of past circum-
 “stances; because I knew that that was not the fit opportu-
 “nity for such enquiry, and would only add fuel to the flame;
 “and because it was very apparent that Dr. Hobart pressed it
 “only to draw from me something which he could turn to his
 “own advantage. This was evident from the use which he
 “made of a prior conversation with regard to Mr. Feltus.”

And here I ask the indulgence of the arbitrators, while I
 explain what were the irregularities complained of. The
 Reverend Dr. Moore formerly held a living in the country.
 While there, he was in the practice of meeting his parishion-
 ers at private houses and in their families, and praying with
 them. It was said, that on these occasions he did not adhere

to the forms of prayer prescribed by the rubric of the Episcopal Church. When he came to this city, he continued this custom: he visited his parishioners in their dwellings; and in their little social circles, he prayed with them. 'This is the misdemeanor which has offended some of Dr. Moore's brethren of this city, and was the cause of the conduct towards him, which gave rise to the letter from Mr. Jones which has just been read. I think this must be heard with astonishment; but I do assure the arbitrators, it is a fact that no other crime ever has been or can be alleged against Dr. Moore, but that he visited the members of his congregation at their houses and prayed with them without book. And yet, if I may judge from my observation, the canons cannot prohibit extemporary prayer at all times; for although I know, that by the laws of the church, the common prayer book must be used before and after sermon; yet there is hardly a clergyman of our church, that I have not heard pray most eloquently, and most devoutly too, in the body of his discourse. So that if Dr. Moore offended, in this respect, it was not in using extemporary prayer, but in not using it as his brethren did, in the midst of their sermons. These familiar visitations of Dr. Moore, and this extemporary praying, appeared crimes of such enormity in the eyes of Dr. Hobart and Dr. How, that they not only refused to admit Dr. Moore into their pulpits, because he had been guilty of them, but they required that Mr. Jones and the rest of their brethren should also exclude him. Nay, so far did they carry their abhorrence of these sins of Dr. Moore, that they insisted that all the clergymen who did not prohibit Dr. Moore from preaching in their pulpit, should themselves be excluded from the pulpits of Trinity Church; and it is a fact that I am sure cannot be heard but with increased astonishment, that Dr. Harris, one of the most venerable and respectable pastors in the diocese, has been under an interdiction on this account. The efforts of Mr. Jones to produce a reconciliation among his brethren, and to bury in oblivion these, as yet secret jarrings and bickerings, so shockingly disgraceful to the clerical character, were considered by Dr. Hobart not only officious, but highly offensive.

But Dr. Hobart had other grievances to complain of. It seems Mr. Jones had presumed to take precedence at the communion and at funerals. How shall I explain this subject of complaint? Will it be believed that a minister of the gospel, whose duty it is to practise as well as preach humility, was offended with his brother, because that brother had at the altar partaken first of the bread and wine, and because he had walked on the right hand when they were together marching in a funeral procession before a corpse. And these fancied wrongs made the subject of the most angry and bitter invective, immediately after prayers, and within the very walls of the sanctuary.

MR. OGDEN. We do not consider the pamphlets of Mr. Jones as evidence, nor do we admit the truth of the statements contained in them. On the contrary, we deny that they are true.

MR. COLDEN. I do not read these passages as evidence of the facts they state. The truth or falsehood of these charges you have never given us an opportunity of controverting. But you say this "Solemn Appeal" forms the controversy which authorised the proceedings against Mr. Jones, and I am selecting some passages for the consideration of the arbitrators, that they may judge of the nature of the controversy. And whether, supposing this book contains the truth, Mr. Jones, under the circumstances which existed, was or was not justifiable in making the publication.

While I am anxious that the arbitrators should be acquainted with the contents of this book, which forms so important a feature in the case under their consideration, I am fearful that if I were to read as much as I had designed to do, I should occupy too much of their time, and exhaust too much of the little strength I have. I shall therefore content myself with asking the attention of the arbitrators to but a few other passages, trusting that before they make their decision they will not only read this book, but all that has been published on this unpleasant subject.

Preliminarily to reading another passage from the "Solemn Appeal," I beg leave to state, that previously to the late election of Dr. Hobart, the minds of the Episcopalians of

this diocese had long been fixed on the oldest minister belonging to Trinity Church, as a successor to bishop Moore, when the dispensations of Providence should make it necessary to select one. This was the Rev. Dr. Beach, a man universally beloved and respected. For more than thirty years he had been a faithful labourer; his piety, his zeal, his mild, amiable and simple manners, commanded the veneration and engaged the affections of all who knew him. When it was first proposed to him to take upon himself the duties of the high and holy office to which Dr. Hobart has been elected, he with characteristic humility declined it. But when he found that the vacant mitre had roused an ambition to which the peace of the church was likely to be sacrificed, he yielded to the solicitations of the true friends of religion, and consented to give her the support of his venerable character, by accepting the Episcopacy. The passage which I am now about to read is Mr. Jones's representation of what took place when this acquiescence of Dr. Beach was known.

“ When these particulars were understood abroad, means were immediately taken to endeavour to prevent the effects which would naturally ensue. Every engine was set to work to get Dr. Beach again to change his ground, and positively to declare that he would not accept of the appointment. Acquaintance after acquaintance, numbers of persons in succession, called on Dr. Beach, and there is reason to believe, were sent, in order to prevail on him not to suffer his name to be made use of, and indeed, positively to decline being considered as a person to whom the offer of the office should be made. Letters were written from different clergymen with whom Dr. Hobart and Mr. How had influence, and whom it is known Mr. How had been to visit a short time before; the purport of which letters was to reconcile Dr. Beach to the opposition which would be made to him; and to convince him of the propriety of appointing a younger man.—In addition to all this, Mr. How waited on Dr. Beach, and in the course of conversation, told him, that he is too old for the appointment, and that if he should suffer his name to be made use of, although some of the clergy might vote for him, it would yet be out of *pity* and not out of *respect*.—To bring matters

“ together, which were probably divided in point of time : Dr. Beach further received from these gentlemen assurances in a peremptory manner, that if he did not positively decline all idea of the appointment, they would use all their influence against him, and oppose his election to the very last step.

“ There is another piece of conduct which ought to be taken in connexion with this, and which had a very considerable effect on Dr. Beach’s mind. Dr. Hobart had not been uninformed of the part which I should act. And, in order to counteract it, he was engaged in procuring certificates concerning his conduct towards me. Among others, he applied to Dr. Beach, to certify that he had never heard Dr. Hobart speak otherwise than respectfully of me. Dr. Beach observed, that he could certainly testify that : but then on the other hand he should be in duty bound to testify, that he had never heard me speak otherwise than respectfully of Dr. Hobart. He was also, he said, acquainted with a circumstance, by which I had unequivocally evidenced my friendship for Dr. Hobart ; while, on my being nominated to a particular official duty, Dr. Hobart evidenced his displeasure at the appointment. For these reasons Dr. Beach said, he thought it best that he should give no certificate, as it could answer no beneficial purpose whatever. Dr. Hobart flew into a passion, and said, “ If you will not do me justice, I will do justice to myself ; and I will publish to the world what *you* have said about Mr. Jones ; and I will publish moreover, that you will say one thing to-day, and, another thing to-morrow ; and I will prove it, sir ; I will prove it.” Taken altogether, Dr. Beach has said, from the manner, as well as from the matter, he never has been so insulted in his life.”

I shall forbear all comments on the representation of scenes like these. Certainly it would be a most painful task to make them, were they necessary.

The next passage that I shall read will give the history of transactions not less extraordinary. It will be seen that some who are now persecuting Mr. Jones, because he has dared to say that they were unworthy the high places which they challenged, could without remorse and without any foundation, make a charge against one of their own brethren which was

calculated to sink him into the veriest depths of infamy.

The appendix to Mr. Jones's pamphlet contains a variety of certificates relative to a charge made by Dr. Hobart against the Reverend Mr. Feltus, and among these is one from Mr. Warner, and another from the Reverend Mr. Ireland, which I will now read.

All whom it may concern are hereby certified, That about the period of Rev. Mr. Feltus's call to Brooklyn, certain reports, highly prejudicial to the reputation of said Mr. Feltus were in circulation throughout that village. Anxious to ascertain the real character of the man who was to be my successor and nearest neighbour, I called on Rev. Mr. Hobart, with whom those reports were said to have originated, for the express purpose of obtaining information. Mr. H. without hesitation assured me, that Mr. F. was a disorderly, factious, dangerous man; regardless of all Episcopal authority, and calculated to do a world of mischief in the church. On my asking what he had done to authorize such an assurance, he told me that he had it in his power to prove Mr. F. guilty of having forged the testimonials which he had brought from Swedesborough. I naturally remarked that this was a charge of a most serious nature, and presumed that it must be understood with some qualifications: and I proceeded to state a case, which Mr. H. might conceive to fall under the description of forgery, but which in a legal point of view might fall short of it. His reply was to this effect:—I perfectly understand the import of the term employed by me; and do positively assert, not only that Mr. F. wrote the testimonials which he has produced, but also that he himself signed the names attached to them. I next enquired if the bishop had been made acquainted with this black transaction; and was answered—that certainly he was, and was taking steps to prevent the settlement of such c-ttle in his (the bishop's) diocese.

As I, at that time, supposed Mr. H. to be incapable of uttering a wilful falsehood, I not only yielded implicit credence to his assertions, but immediately on my return to Brooklyn, communicated them (as I conceived it my duty to do) to certain influential gentlemen there. A member of the

vestry, and one to whom I imparted the particulars above related, informed me that they had already heard of the charge; and had hoped as well as myself, that it would have proved to be groundless.

I have only to add, that from the unreserved manner in which Mr. H. made the foregoing communication to me, I inferred that he was desirous of giving it all necessary publicity; and I acted accordingly.

Should it be necessary, I am willing and ready to make oath that the present statement is, as to substance, correct and true. Witness my hand, this 5th April, 1811.

JNO. IRELAND.

The Rev. Dr. Hobart having drawn up a sheet of charges, impeaching, as I thought, the moral character of the Rev. Mr. Feltus, and meeting him at messrs. Swords's book store, I conversed with him on the subject, and invited a trial of the charges preferred against him, assured him I should prove them to be totally false.

Shortly after the above conversation, Mr. Feltus moved to Brooklyn, bringing with him ample *Testimonials* from the congregations of Swedesborough, and also from bishop White of Philadelphia, which Dr. Hobart had seen and read, they being left for inspection with bishop Moore: and meeting Dr. Hobart in Wall-street, I asked him if his opinion was not altered now with respect to Mr. Feltus. He made me this reply: No sir, I think worse of him now than before. I immediately asked, is there any new charge against him? to which he replied, "Yes, I charge him with forging his *Testimonials* from the church of Swedesborough." Forgery sir, I replied, is a high crime, I cannot believe it. He answered, "They are his own hand writing: I have compared them with his letters and am satisfied." I told him I should write to Swedesborough on the subject, and if it was really so, he would forfeit my friendship *for ever*. A letter was accordingly wrote to the church at Swedesborough: the answer, with a copy of their minutes from the Journal are now to be seen, proving the charge to be a false and malicious slander.

GEORGE WARNER.

The above will be attested }
to, if required. }

And let me observe, that though we may be told that Mr. Ireland has fallen under the displeasure of the church, I hope that displeasure is not sufficient entirely to destroy his credit. Happily the times are gone past, when the thunders of the church could as effectually blast a man's character as the lightning of heaven could beat down his frame. The page of history has recorded for our veneration those who have died in former days under the sentence of ecclesiastical tribunals. And when I know that the Rev. gentleman, whose cause I now advocate, is also an offender in the eyes of those who hold the authority of Trinity Church, I cannot admit that her censures deserve much respect.

I will only add, in relation to this affair, that there will be found in the "Solemn Appeal," certificates and affidavits, which I shall not now stop to read, which repel this foul slander against Mr. Feltus, in the most ample and honorable manner. And here let me ask, without reference to the vocation of the parties connected with this transaction, if such a charge had been made by a layman against his neighbour, and it had been proved to be a malicious slander—what should we have said? Should we have said to the injured individual, the good of the church requires that you should not expose your wrongs. Your calumniator is about to be put over your head, do not let it be known how far he has injured you, lest you may thereby prevent his attaining an elevation that may enable him to set his foot on your neck.

But if it was so great a crime in Mr. Jones to publish this book, why was it not equally criminal in Mr. Feltus to publish the appendix? The charges of Mr. Feltus are not less momentous than those made by Mr. Jones. Why is Mr. Jones hunted down with so much inveterate perseverance? Why do the clergy of Trinity Church unite in the pursuit with such cordiality, while Mr. Feltus is passed unheeded?—I will not attempt to account for such inconsistency. But I shall leave the arbitrators to draw their own conclusions, after I have stated, that though Mr. Feltus was settled in this diocese, he was not a member of Trinity Church, and therefore did not stand between the rich rectorship of that corporation and a younger clergyman.

In justification, however, of Mr. Jones's publication, I shall beg leave to refer to an authority the respectability of which, no doubt, will be admitted by our adversaries. They may appeal, in the course of the argument they will address to your honors, to the authority of dead bishops. I beg leave to quote on this point the sentiments of a living one. The first paragraph in bishop Hobart's statement, is in the following words :

“ To defend the church, when her authority, her order, and her peace are assailed, is the duty of those who are entrusted with the management of her concerns. And it is a duty which should ever be discharged with promptitude, resolution, and zeal. The existing state of the church imposes upon me the necessity of defending her, and renders highly expedient the present address to you.”

Mr. Jones did think that the order and peace of the church were assailed, by the avowed intention of seating a divine of Dr. Hobart's temper and disposition in the episcopal chair. And if there be any truth in the representations which Mr. Jones has made of Dr. Hobart's conduct towards his brethren, towards Dr. Beach, Dr. Harris and Mr. Feltus, will any man say Mr. Jones thought incorrectly ?

But Dr. Hobart, who is so alive to publications which may affect himself, has felt no remorse when it has suited him to attack the character of others. And he has done this when neither exacted for his own defence, nor excused by the slightest provocation. “As an evidence of this I will read some very extraordinary passages from Dr. Hobart's letter to the vestry.

“ Mr. Jones considers the phrase, applied by myself and others, “ *a man in whom no confidence is to be placed,*” as the cant phrase by which every one is cried down who is not found “ yielding and submissive.”* This phrase, so obnoxious in me, is daily used with impunity in the intercourse of the world. No secular concern could be transacted with safety or success, if an analysis of the charac-

* *Appeal*, p. 1.

“ters of individuals, and free conversation concerning them
 “among those engaged in the management of this concern,
 “were not permitted. There is no man who does not find
 “it absolutely necessary to act upon this principle in the af-
 “fairs of the world. And surely in ecclesiastical matters,
 “where those qualities that are calculated to excite distrust
 “of their possessor, are even more dangerous and injurious
 “than in temporal interests, the exercise of this principle is
 “more justifiable. Care indeed must be taken that it be ex-
 “ercised only for good reasons, and only to a necessary ex-
 “tent. That this rule was observed by me in my conduct
 “to the Rev. Mr. Feltus, I am compelled in self-defence to
 “show.

“This gentleman, though according to his own declaration
 “originally a Baptist, officiated for a long time among the
 “Methodists, and was considered one of their number. His
 “denial that he ever was a Methodist, though he officiated
 “among them, and is said by many respectable ministers and
 “others of that communion, to have belonged to their socie-
 “ty, was certainly not calculated to inspire me with confi-
 “dence in him. Nor was this likely to be excited by my
 “knowledge of the fact, that while a preacher among the
 “Methodists, he was distinguished for his violent, and some-
 “times abusive language concerning the Episcopal Church.
 “The conviction, that he was not “to be depended on,” if I
 “may be allowed the phrase, was further confirmed by the
 “opinions of many respectable persons of the Methodist com-
 “munion, who had full opportunity of knowing his character.
 “They spoke of him as “a man in whom no confidence was
 “to be placed,” pompous and violent often, but hollow and
 “insincere in his professions. I was satisfied that this repre-
 “sentation was not owing to resentment at his having taken
 “orders in the church; because the same persons spoke in
 “high terms of others who had received Episcopal ordina-
 “tion.

“These traits of character did not change with a change
 “of communion. Even while a candidate for orders in the
 “church, I am credibly informed, he was considered by at
 “least some among whom he officiated in the capacity of lay

“ reader, as ready to attach himself to any communion that
 “ might suit his purpose; and was in the practice of mutilat-
 “ ing the liturgy, and introducing extempore prayer. After
 “ his ordination, the same practice continued. His conduct
 “ was thus at variance with the high tone with respect to
 “ church principles, and to the order and the worship of the
 “ church, which on some occasions, and with some persons
 “ he assumed; while with others he could accommodate him-
 “ self to a much lower grade of church principle. Though
 “ sometimes the loud advocate of order and panegyrist of the
 “ liturgy; in his own congregation in New-Jersey, he origin-
 “ ated private meetings not sanctioned by this order, and
 “ where this liturgy was laid aside. And for some time after
 “ his settlement at Brooklyn, he could omit parts of the ser-
 “ vice required to be used, as suited his purpose. These
 “ were not solitary acts into which the most correct might be
 “ occasionally betrayed, or for which the force of some impe-
 “ rious circumstances could be urged as an apology; but they
 “ were frequently practised by him for years; even after the
 “ highest principles as a Churchman were on certain occa-
 “ sions avowed by him.”

Let us assemble the epithets which Doctor Hobart here ap-
 plies to one of his brethren—to a clergyman who has been
 many years settled in this state; who has one of the largest
 and most respectable congregations in the diocese; who is
 beloved, esteemed and respected by his parishioners, and who
 in point of talents will not suffer by a comparison with his
 calumniator. He is, according to Dr. Hobart, “ a man in
 whom no confidence can be placed, pompous and violent
 often, but hollow and insincere in his professions”—“ ready
 to attach himself to any communion that might suit his pur-
 pose.” And add to all this, he too, as well as Dr. Moore,
 had been guilty of the abominable crime of originating pri-
 vate meetings of his parishioners, and using extemporary
 prayer!

But it is not so much for presenting this hideous picture to
 the view of the arbitrators that I read this passage, as to direct
 their attention to an expression which it contains of Dr. Ho-
 bart's sentiments on that part of the case now under conside-

ration. "No secular concern," says Dr. Hobart, "could be transacted, if an "analysis of the characters of individuals, and free conversation concerning them among those engaged in the management of this concern were not permitted."—"And surely," he adds, "in ecclesiastical matters, where those qualities that are calculated to excite distrust of their possessor are even more dangerous and injurious than in temporal interests, the exercise of this principle is more justifiable." If this reasoning will excuse Dr. Hobart's attack on Mr. Feltus, why will it not be an excuse for Mr. Jones's publication? To calumniate the character of an humble rector, it seems, is the exercise of a justifiable principle. But to analyse the character of an individual who aspires to a mitre, and who is the favourite of the vestry of Trinity Church, is a crime that can only be expiated by the utter ruin of him who is guilty of it.

But we may be told that Dr. Hobart only asserts the necessity of tolerating "analysis of the characters of individuals *in free conversation*," and therefore, what he has said will not sanction a publication in relation to private character. But let me ask, shall a man be justified in talking down his brother in private circles; shall he be permitted secretly to attack his fame; shall he make his reputation the tattle of a tea-table, and thus undermine and destroy him, without affording an opportunity for vindication, shall this be excused as a necessary "analysis of private character?" and yet a publication which makes its charges manfully, boldly, and openly; which invites the accused to justify himself, be condemned! If the charges in Mr. Jones's book be untrue, nothing can justify its publication; but if they are otherwise, and that they are so he insists, he was under a most sacred obligation to publish them at the time he did. Had he satisfied himself with reporting these things of Dr. Hobart in the circles of his acquaintance, without affording Dr. Hobart an opportunity for vindication or denial, I think he ought not to have been forgiven.

I shall trouble the arbitrators with but one more quotation from this letter of Dr. Hobart's to the vestry. It is to shew how far Dr. Hobart felt himself at liberty to attack the

character of his brethren not merely “ by analysis in free conversations,” but by publications of such a nature as was best calculated to do them the most irreparable mischief. The document I am now about to read we shall prove was written by Dr. Hobart. It is true, it is signed by other clergymen as well as by himself. But when, by our testimony, we shall have explained by what means the signatures of Dr. Harris and others were obtained, I believe the opposite counsel will be very willing to forget that their names appear.

“ THE RIGHT REV. BISHOP MOORE.

New-York, June 12, 1807.

“ RIGHT REV. SIR,

“ The undersigned presbyters of your diocese beg leave respectfully to call your attention to the following circumstances; with which they presume, however, you are already acquainted.

“ At the election, a few years ago, of a rector of Christ Church, in this city, the Rev. Mr. Feltus was held up for that office, and was supported by considerable influence. As the election eventuated in the choice of another person, it was to be presumed, that, from considerations of delicacy, Mr. F. would be remarkably circumspect in his future deportment towards that congregation, lest the influence which he possessed in it might tend to excite dissatisfaction and division. At a visit, however, to this city, a short period after the election, his conduct was not only a violation of one of the canons of the church, but directly tended to excite invidious comparisons between himself and the rector of Christ Church, to the disadvantage of the latter. At his recent visit he made the most solemn protestations to you, Right Rev. Sir, of his sorrow for any irregularity of which he might have been guilty, and of his disposition and determination, in every way in his power, to promote the comfort and influence of the rector of Christ Church. Towards this gentleman his conduct was apparently frank and cordial; and with him, as well as with you, Sir, the day before his departure, he freely conversed on the subject of accepting a call which he had received from the church at Brooklyn. On the morning of

“ his departure, several persons of the congregation of Christ
 “ Church waited on their rector, to inform him of their anx-
 “ iety and determination to obtain, if possible, Mr. Feltus for
 “ their minister; and that for this purpose, he (their rector)
 “ must immediately consent to admit Mr. Feltus as a co-rector.
 “ On their rector’s stating to them, that Mr. Feltus was pre-
 “ paring to accept the call from Brooklyn, they replied that
 “ Mr. Feltus would not accept the office of an assistant minister,
 “ but that he had assured them, that, on condition of his be-
 “ coming co-rector, he would give the preference to Christ
 “ Church. These gentlemen assuredly would not have made
 “ these declarations, if they had not indirectly, at least,
 “ from Mr. Feltus, or from some one of his confidential
 “ friends ascertained his sentiments and wishes.

“ On the above facts we deem it our duty to observe—that
 “ it appears to us little consistent with that christian humility
 “ which should ever be the attendant of extraordinary piety
 “ and of extraordinary zeal for the glory of God and the
 “ good of souls, in Mr. Feltus to disdain the office of assist-
 “ ant minister, which has subsisted from time immemorial in
 “ Episcopal Churches, and has, at different times, and in
 “ different places, been cheerfully filled by persons of at
 “ least equal pretensions with Mr. Feltus. The conduct of
 “ this gentleman we deem further exceptionable, as it is
 “ calculated to bring odium upon the office of assistant minis-
 “ ter; to excite dissatisfaction and desire of change where
 “ that office subsists; and to introduce into this diocese an *inno-*
 “ *vation* in the constitution of parochial churches, of which
 “ there is only one solitary instance (introduced under some
 “ very peculiar circumstances) in the United States, and
 “ which we believe is unnecessary, injudicious, and tending
 “ to discord and disunion.

“ We think also, that it was the duty of Mr. Feltus, in his
 “ *frank* conversations with you, Right Rev. Sir, and with
 “ the rector of Christ Church, at least to have consulted *you*
 “ on the propriety and expediency of such a novel arrange-
 “ ment, and the rector of Christ Church whether it would accord
 “ with his ideas and feelings. But the total silence of
 “ Mr. Feltus with you, Sir, and with the rector of Christ

Church on this point; his holding out the idea of accepting
 the call from Brooklyn; and his repeatedly and solemnly
 disclaiming all wish or design to interfere with the rector
 of Christ Church, while a plan was maturing, if not by
 his *direct influence*, at least with his *connivance*, to intro-
 duce him as a co-rector in that church, display, we deeply
 regret to say, a meanness and duplicity, connected with a
 cunning, and an inordinate love of power and popularity,
 which render it impossible for us to extend in future our
 confidence to this gentleman. We hesitate not to declare,
 that we shall greatly deplore any event which should con-
 nect him with us as a presbyter of this diocese. We make
 this declaration with the less hesitation, as we understand
 Mr. Feltus is at present usefully and eligibly situated in the
 state of Jersey. And we, therefore, cannot think any change
 desirable on his part, which will place him in a situation
 where he will not enjoy that confidence and esteem of his
 brethren which may be of importance to his happiness, if
 not to his respectability and usefulness.

We make no apology to you, Right Rev. Sir, for this
 address. We know you deem it the duty of your presby-
 ters, on all occasions of importance, frankly to furnish you
 with their sentiments. And the conduct which we have
 stated is of too great importance to the interests, the peace,
 and harmony of this diocese, and too important, therefore,
 in its personal consequences to us, for us to have remained
 silent.

We make this communication to you, in the wish that
 a copy of it may be forwarded to Mr. Feltus, and to any
 other persons to whom you may judge it expedient so to
 do.

We are, Right Rev. Sir,

Very respectfully and affectionately yours,

ABRAHAM BEACH.

JOHN BOWDEN.

JOHN HENRY HOBART.

WILLIAM HARRIS.

GEORGE STREBECK.

EDMUND D. BARRY.

Now what was the crime of Mr. Feltus, which subjected him to this bitter invective? Why is he charged with "meanness and duplicity, and an inordinate love of power and popularity?" And why is the bishop requested to publish these charges, by communicating them to any persons to whom he might judge it expedient? The whole head and front of the offending is "that Mr. Feltus had disdained the office of assistant minister, which had been filled by persons of at least equal pretensions with Mr. Feltus;" or in other words, which was then filled by bishop Hobart himself. I will make no other comment on this, than to apply to it a passage from Dr. Hobart's own eloquent pen: "Vanity," says he in his letter to the vestry, "is a foible when indulged in the circles of private friendship, but when it intrudes into the sanctuary; when it raises its pretensions in the presence of God, when it pollutes our sacred things, to palliate it with this appellation, would be charity greatly misapplied." Most truly it would be so! When vanity intrudes into the sanctuary and pollutes our sacred things, it ought to be called by its right name—crime!

There is another evidence afforded by Dr. Hobart, of the liberties he thought himself authorized to take in the "analysis of the characters of individuals in free conversation." In Mr. Jones's book, he accuses Dr. Hobart of having circulated pitiful tales against him. Dr. Hobart does not deny the charge, but extenuates it in a singular way. The passage containing the charge, as made by Mr. Jones, and Dr. Hobart's answer to it, will both be found in Dr. Hobart's "Statement," from which I shall now read:—

"At tea-table parties, he has introduced the edifying topics of little, mean, pitiful tales about family concerns: which, in the manner represented, I here, in the face of the world, declare to be false, and am able to prove to be false; and which, under the real attending circumstances, are such as no honest and honourable man need blush to have made known."*

* *Mr. Jones's pamphlet, p. 12.*

“ Now, I am able to prove, by the testimony of two respectable persons, that these “ little, mean, pitiful tales” originated near two years ago with Dr. Harris. They were stated by him to these persons as proofs of the “ little, mean, and pitiful” disposition of the individual for whom he appears now prepared to sacrifice the authority and the peace of the church. They were never *circulated* by me; and only alluded to in a very confined assembly of persons, most of whom knew them previously, as evidences of the very extraordinary change which had taken place in Dr. Harris’s sentiments of Mr. Jones.”

Dr. Hobart does not deny that he did relate pitiful tales of Mr. Jones, but he says he did not *circulate* them. He only alluded to them, in a confined circle, to *most* of whom they were known before. Whether telling a tale in the presence of people, to some of whom it was not known before, be or be not circulating it, the arbitrators must determine. But I think they will be shocked, when they understand that one of the pitiful tales here alluded to, was a story which Dr. Hobart told at a tea-table, as coming from Dr. Harris, of Mr. Jones’s having borrowed half a load of wood from Dr. Harris in the winter when wood was dear, and returned it in the spring when fuel was cheap. Let it be remarked too, that this pitiful tale was told by Dr. Hobart after the affairs between him and Mr. Jones had arrived at their crisis. Then some one of the confined circle, in which Dr. Hobart was expatiating on the character of Mr. Jones, had the humanity, so far to interpose in behalf of Mr. Jones, as to say that he was esteemed by Dr. Harris. Upon which Dr. Hobart said, then Dr. Harris now thinks differently of Mr. Jones from what he formerly did. And as an evidence of Dr. Harris’s former opinion, bishop Hobart related, for the edification of his hearers, and as an example of that Christian charity which it was his office to inculcate, the story of the half load of wood ! It will appear that the whole foundation for the tale was a joke of Dr. Harris, which passed when bishop Hobart, Mr. Jones, and others, were present at the house of Dr. Harris.

But though the publication of a book has been made so grievous a crime in Mr. Jones, it would seem that he has only anticipated Dr. Hobart, who must have had an intention of publishing. With what other view could Dr. Hobart have employed himself in collecting certificates relative to the controversy between him and Mr. Jones, long before Mr. Jones's book made its appearance? Though some of the certificates published in Dr. Hobart's letter to the vestry are without date, the arbitrators will find that the certificates of bishop Moore and Mr. Barry are dated on the first of April, Mr. Lyell's on the eighth, and Dr. Bowden's on the tenth of the same month; whereas Mr. Jones's "Solemn Appeal" is dated on the first of the following month of May, and was not published until some time in that month. And yet the publication of the "Solemn Appeal" is represented as the origin of all the unhappy differences in the church. And Dr. Hobart is represented as an innocent, passive, unsuspecting victim, who first learns that he is attacked from this production of the press, and who had never thought of putting himself on the defensive until he was assailed by Mr. Jones's book. For what purpose then were these certificates collected at so early a day? Were they to rest in the port folio of Dr. Hobart? Were they designed to be incorporated in a publication which Dr. Hobart had in contemplation, as they are now introduced in his letter to the vestry? Or, were they intended to be produced, like the story of the wood, as corroborative documents, when at some other tea-table Dr. Hobart, surrounded by the venerable matrons of his parish, might think it necessary "to analyse the character of Mr. Jones in free conversation."

But if the mere publication of a book, without reference to the occasion of the publication or the matter that is published; if it affords no excuse for Mr. Jones to say, that what he published was true; that he had no other mode of defending himself against the slanders and calumnies with which his enemies were continually assailing him; if it be no excuse for him to allege, that the manner in which the election of a bishop was precipitated, allowed him no opportunity to warn the members of the church against the mischiefs that would

result from elevating an unfit character to that high office. How will Dr. Hobart justify his publications? He printed an edition of his letter to the vestry, and sent several hundred copies of it around to the members of the congregation, with the word "Private" written in his own hand upon the covers. And shortly after, whether by authority of Dr. Hobart or not we do not know, a large second edition was published in the city, which was universally disseminated. Is it possible that this little contrivance of writing "private" on the covers of the books which Dr. Hobart published, will be resorted to, to distinguish his case from that of Mr. Jones? To me it seems there is a distinction, and it is the same which every generous mind will acknowledge exists between a bold, open, manly attack, and that which seeks to destroy by hidden means. It is not however his letter to the vestry only that Dr. Hobart has to justify. If Mr. Jones is to be punished merely on account of publication, Dr. Hobart must show on what principle he is to be excused for the publication of his "Statement;" and for the publication of the innumerable little two-penny anonymous pamphlets, on the subject of this controversy, of which I have now a volume before me, and of which it will not be denied that Dr. Hobart and Mr. How are the authors? If the laws of the church forbid a clergyman to publish under any circumstances; and if Dr. Hobart and Mr. Jones have equally offended against those laws, how does it happen that the one stands before you now degraded from his profession, at an advanced age, and with a wife and children turned upon the world without a means of support, while the other is rewarded with the highest honours the church can bestow; and the boundless treasures of the corporation, under whose banners he carries on this contest, afford him a revenue which no other priest in our country has or ever had?

For the sake of making some observations, which perhaps would have been more in order in a prior part of my argument, I beg leave, before I enter on a new topic, again to advert to part of the thirty-second canon, which I believe I have already slightly noticed. A controversy to afford grounds for proceeding under the canon must be "of such a

nature as cannot be settled by the parties themselves." It appears to me that no controversy can be said to be "of such a nature as cannot be settled by the parties," until some experiment or some effort to settle it has been made.

I think it impossible to read this canon without feeling a conviction that it was in the minds of those who made it, that in case any controversy should arise, its provisions would not be resorted to, until it should have been ascertained that efforts for an amicable adjustment were in vain. Supposing this to be the true construction of the canon, let us examine the conduct of the vestry and see what efforts they made to settle the controversy, which they say existed between them and Mr. Jones, previously to their resorting to it. The "Solemn Appeal," was published early in May 1811; and on the thirteenth of the same month the vestry passed their first resolution on this subject. This resolution, or the report connected with it, is nothing more than a censure clothed in such language as we might expect from the pens of those whose names it bears. A copy of this resolution, pursuant to a direction which it contains, was served on Mr. Jones. But let it be remarked that there is nothing in the report or resolution which could convey to the mind of Mr. Jones the slightest intimation that the vestry expected any thing from him; much less could he understand from the report or resolution what the vestry expected or required. If the vestry desired that Mr. Jones's book should be suppressed: If they desired that he should make an apology to them, or that he should humble himself before their favourite, Dr. Hobart, would it not have been well to have expressed their desire in this resolution? I must beg the arbitrators to turn to the report, which will be found among the documents which are before them, and to see whether I have misrepresented its purport.

But although no such expectation was expressed, Mr. Jones understood a few days after this resolution was passed, that the vestry expected he would suppress his book. In consequence of which Mr. Jones called in all the copies that had not been sold. They were put away in the store of the printer, where they lay till after Mr. Jones was released from all

obligations of obedience to the church. From this time, till the receipt of bishop Hobart's letter by the vestry, no proceeding whatever was had. There was no kind of communication between the vestry and Mr. Jones. If a controversy then existed between them, not the slightest effort was made to compromise it. And it is most confidently believed, and we think we shall be able to prove, that from this time until the publication of Dr. Hobart's letter, there was not a single member of the vestry who did not think the affair, so far as they were to have any thing to do with it, was finally settled. But the design of suppressing Mr. Jones's book having succeeded, Dr. Hobart took his leisure to prepare the publication which was to rekindle the flames of discord. Towards the latter end of August Dr. Hobart and Mr. How published their *public private letter*, and sent it to the vestry. A few days after, that is to say, on the fifth of September, the committee on the state of the church, which, as we understand, was not appointed with a view to this particular object; but as a standing committee of the vestry, made a report, recommending to the vestry proceedings against Mr. Jones under the thirty-second canon.

Now if it be the meaning of the canon that parties in controversy cannot avail themselves of it, until there have been vain efforts made for an amicable reconciliation, where do we find, in the history of these proceedings of the vestry, the slightest traces of such efforts on their part? They procure the suppression of Mr. Jones's book. While it is suppressed Dr. Hobart publishes, and the vestry still continuing to oblige Mr. Jones to keep in his book, while they see edition upon edition of Dr. Hobart's letter published, advertised and universally distributed, proceed to prosecute Mr. Jones on account of the book they had obliged him to suppress. I do confess, that all the respect I have for the great names by which these proceedings appear to be sanctioned, cannot reconcile them to my ideas of justice and impartiality.

There is another circumstance connected with this part of the transaction which well deserves to be noticed. Mr. Jones, suspecting that the letter of Dr. Hobart might, as it

was intended, excite the vestry to take some measures against him, wrote to the vestry the letter which appears in the documents before you, dated the 4th of September. In this letter Mr. Jones informs the vestry that he waited "for the intimation of their opinion as to the line which it would be proper for him to pursue." "That he was ready to enter on any terms of amicable adjustment, consistent with the character of gentlemen and of christians." One would think that after the receipt of this letter the vestry could not have proceeded on the ground that such a controversy existed between them and Mr. Jones as could not be settled; and that it had proceeded such lengths as to preclude all hopes of a favourable termination. But the vestry make no other use of this letter than to notice on their minutes the receipt of it, as an introduction to their resolution passed on the very day they received it. And by which they resolved that Mr. Jones should be pursued to the utmost extremity. There is a passage in bishop Hobart's letter, which so manifestly displays the design and expectation with which it was written, that I cannot but beg leave to direct the attention of the arbitrators to it. The right reverend bishop, after having told us that he had matured this production of his in the short space of five or six weeks, though it appears, as I have before observed, that some of the certificates which it contains are dated as early as the April preceding; he then adds, "I mention these circumstances to preclude the suspicion that its appearance, at this moment, is the result of some unworthy design. You must permit me earnestly and respectfully to solicit, that no act of your's, at your *next* meeting, may furnish a pretext for imputing this design to me." Certainly it was judicious in the bishop to caution the vestry against the appearance of preeipitancy, which their acting immediately on the receipt of his letter might afford. But at the meeting after the *next*, the right reverend father delivers my unfortunate client over to the influence of his letter, and the mercy of the vestry. But the vestry were too zealous to gratify, what they knew were the desires of the bishop, even to observe the prudence he had recommended; for at the very *next* meeting after the publication of his letter, as if

they had considered it an invocation of their vengeance, and as if Mr. Jones's letter, praying to be reconciled, had excited their anger or resentment, they pass their resolution of the fifth of September, delivering Mr. Jones over to an ecclesiastical tribunal. To show the temper and disposition which Dr. Hobart, and Mr. How have manifested, from the beginning to the end of these proceedings, we shall prove, that from the moment of Mr. Jones's publication, these reverend gentlemen have been loud in their declarations that Mr. Jones should be driven from his home and compelled to leave the diocese. Notwithstanding Dr. Hobart's humane petition that the vestry would do nothing against Mr. Jones at their *next* meeting, we shall prove that he and Mr. How have gone to different members of the vestry, and in the most earnest manner, sometimes with warmth and even anger, pressed the obligations which the vestry were under to pursue such measures, as would separate Mr. Jones from the church in this state.

I am happy now to be able to proceed to the consideration of another branch of this subject. If there was no controversy, or if it was not such a controversy as it had been ascertained by experiment could not be settled by the parties, there was no foundation for proceedings under the canon, and all that have taken place must be illegal and void. I presume it will not be contended that the resolution of the vestry could make a controversy, if none existed independently of the resolution. But admitting, for the sake of argument, that such a controversy as, in the contemplation of the canon did exist, yet we insist that the whole proceedings are irregular and uncanonical, because the tribunal which has assumed to act was not constituted according to the canon.

By the canon, application is to be made to the bishop of the diocese, and he, with his presbyters, are thereupon to proceed according to the provisions of the canon. And that the authority is given to the diocesan and to no other, the vestry have admitted by their resolution of the 5th of September, by which they resolve, that application shall be made to the bishop of the diocese; and that the right reverend, the bishop of the diocese, be requested to take into con-

sideration the subject matter of their resolution, and with the assistance of his presbyters to proceed therein according to the directions of the canon.

This important question then occurs, who was the bishop of the diocese? Dr. Moore has assumed the power; we say it belonged to bishop Provoost.

Dr. Provoost was duly elected bishop of this state in 1789: he was consecrated in England. In the same year he was invested as diocesan of the church in this state, and continued to discharge the duties of the office until the year 1801, when oppressed by ill health and severe family afflictions, he formed a determination to resign. In a special convention held in this city, on the first of September 1801, he made a verbal declaration of his intention, and immediately left the convention. The general convention being in session a few days after at Trenton, bishop Provoost addressed to bishop White, as president of the house of bishops, a letter dated the 7th of September, which appears on the documents before you, and by which Dr. Provoost requests the president to inform the house of bishops that he had resigned at the late meeting of our church convention his jurisdiction as bishop of the Protestant Episcopal Church in the state of New-York. From this time till the present moment bishop Provoost has lived in the most perfect retirement. He was never made acquainted with the proceedings of either the state or general convention, consequent to his proffered resignation; and he did fully believe that his resignation had been accepted, till the agitation of the church, occasioned by the matters now under consideration, brought to his knowledge the proceedings of the two conventions. Bishop Provoost, therefore, never thought of exercising any episcopal function, after he had tendered his resignation, till he attempted to interpose his authority, to arrest, what he thought, the violent and illegal proceeding against Mr. Jones.

But let us examine the proceeding of the general convention upon the receipt of bishop Provoost's letter. Their minutes are in the documents which are before the arbitrators. On the 9th of September the bishops, in answer to an application on the subject from the clerical and lay deputies,

return to them a resolution, in which the bishops say that the contemplated resignation of bishop Provoost is inconsistent with ecclesiastical order, with the practice of episcopal churches in every age, and with the tenor of the office of consecration. That the bishops "judge it to be inconsistent" "with the sacred trust committed to them, to recognize" "bishop Provoost's act as an effectual resignation of his episcopal jurisdiction."

"Nevertheless," say the bishops, "being sensible of the" "present exigencies of the church of New-York, and approving of their making provision for the actual discharge of" "the duties of the episcopacy, the bishops of this house are" "ready to consecrate to the office of bishop any person who" "may be presented to them with the requisite testimonials" "from the general and state conventions."

"But this house must be understood to be explicit in" "their declaration, that they shall consider such a person as" "assistant or coadjutor bishop during bishop Provoost's life," "although competent in point of character to all the episcopal duties, the extent in which the same shall be discharged by him, to be dependent on such regulations as expediency may dictate to the church in New-York, grounded on" "the indisposition of bishop Provoost, and with his concurrence."

One would think, that after this solemn and explicit resolution of the bishops, there could be no doubt of their view of the subject, neither as to the power of bishop Provoost to resign, nor as to the character in which they meant to consecrate bishop Moore. He was to be assistant or coadjutor bishop only. Who then was to be the diocesan? To put out of question who the bishops considered as such, they resolve that Dr. Moore can only discharge the duties of the episcopacy with the concurrence of bishop Provoost.

But it has been said that this resolution of the house of bishops only applies to the spiritual jurisdiction of bishop Provoost, and that though this could not be resigned, yet there was nothing to prevent the resignation of his temporal jurisdiction of the diocese. To this it is to be answered, that whatever it was that bishop Provoost offered to resign,

it was that that the bishops refused to accept. Bishop Provoost's letter tenders a resignation of his "jurisdiction as bishop of the protestant episcopal church in the state of New-York."

The bishops resolve, "that it is inconsistent with the sacred trust committed to them, to recognize the bishop's act as an effectual resignation of his *episcopal jurisdiction*." But if there were any grounds for this distinction, the consequence would be, that bishop Provoost would remain the spiritual diocesan, and bishop Moore might be the assistant or coadjutor temporal diocesan. Let me ask, however, what are the temporalities of a bishop in this country? In England they are very obvious and substantial; they consist of large estates and revenues. But in this state I know of no other temporalities belonging to a bishop than his lawn sleeves. He has not even a mitre, unless it be the block over Trinity Church which has been newly decorated.

Shall we be told that the bishops had no authority to decide this question of resignation? I hope not. I have always believed that these reverend fathers of the church, who derive their authority from no mortal source, had power, infinitely paramount to the decision of a question like this. I know that it is by their authority that the articles of my faith are established, and it is in deference to their high spiritual stations that I have learned to admit an alteration in the very creed of my religion. I hope the divines who are connected with this controversy will not instruct us that we may question the authority of the bishops on a subordinate point like this. If they should do so, there may be those, in whose minds doubts may arise whether it be not possible that these spiritual heads of our church may not also be mistaken as to matters of much greater moment.

This resolution, however, of the house of bishops, is not the act of that body alone. It has the concurrence of the house of clerical and lay deputies; and so is to be considered as the act of the supreme legislature, if I may so express myself, of the church. It is recorded in the minutes of the proceedings of the house of clerical and lay deputies, that upon receiving the communication relative to bishop Pro-

voost's resignation from the house of bishops, and the terms on which they would consecrate Dr. Moore, the lower house proceeded to sign the requisite testimonials in favour of Dr. Moore; and ordered them to be presented to the house of bishops. On the next day, September the 10th, the minutes state that a message was received from the house of bishops, informing the clerical and lay deputies that the bishops had approved the testimonials in favour of Dr. Moore, and that they had appointed the next day for his consecration; and thereupon it was resolved, that the house of bishops should be informed that the house of clerical and lay deputies would attend the consecration of Dr. Moore at the time appointed. On the 11th of September, being the day appointed by the bishops for the consecration, it appears by the minutes of the clerical and lay deputies, that "the house adjourned to attend divine service at St. Michael's church, Trenton, on occasion of the consecration of the Rev. Dr. Moore, bishop elect of the church in New-York."

Now putting all these things together, can there be any doubt but that the house of clerical and lay deputies concurred with the house of bishops, in their resolutions respecting the resignation of bishop Provoost, and the consecration of bishop Moore?

I have read, as the words of a saint, of saint Ignatius, I think, or of one who assumed his signature, that "when a man gets up and walks forward, all controversy about the existence of motion must be at an end." It must be admitted, that there is great wisdom in the saying, and we only desire that it may be applied to the proceedings of the house of clerical and lay deputies; and then, we think, that all controversy, as to their concurrence in the acts of the bishops, must be at an end.

If it should be urged, that neither the bishops or the house of clerical and lay deputies, had authority to reject the resignation of bishop Provoost; and that all power, in this respect, rests with the convention of the diocese, two points are then to be considered. First, whether the state convention can accept the resignation of a bishop? And, secondly, supposing they have the power, whether they did accept the

resignation of bishop Provoost? Upon the first point, that is to say, as to the power of the state convention to accept the resignation, I shall say but very little, that being a part of the case which I shall leave to the gentleman who has the humanity to be my associate on this occasion; and who has had opportunities of acquiring a knowledge of ecclesiastical law, to which I have not the slightest pretensions. I presume it will be admitted, that every resignation must be to a superior; and unless it can be shown, that the state convention is the superior of its bishop, it will follow, that it cannot accept his resignation. It is not to be supposed that, because the state convention elects its diocesan, he may, therefore resign to them. In England the dean and chapter elect; and yet the resignation must be to the superior, who is the metropolitan. But as I have said, I shall leave this part of the case to my associate; and proceed to enquire whether the state convention did or did not accept bishop Provoost's resignation.

That bishop Provoost meant to resign all his power, whether spiritual or temporal; and that he for a great length of time, thought he had effectually resigned, there can be no doubt. But it must be granted, I think, that to make an effectual resignation there must be two parties; and the concurrence or acts of two parties;—the one resigning, and the other accepting. The minutes of the state convention will show, that the last has, in this case been wanting; and that the resignation of bishop Provoost never was accepted.

As I have mentioned, bishop Provoost appeared in his place at the state convention, on the third of September, 1801. As soon as it was opened he addressed the convention, and, as it is entered on the minutes, "resigned his episcopal jurisdiction of this diocese." Bishop Provoost then left the convention. A president, *pro tempore*, was chosen; and a committee were appointed to consider and report what measures were necessary to be pursued in the, then, situation of the church. This concluded the proceedings of the first day of the session of the convention. And, certainly, there is nothing appearing on the minutes of this day's proceedings which indicates an acceptance of the proffered re-

signation. The next day the committee reported several resolutions, which are as follows: "The Right Reverend Samuel Provoost having declared that he resigned his jurisdiction as bishop of the Protestant Episcopal Church in this state; and having expressed his affectionate wishes for the prosperity of the church in general, and the individual members of the convention.

"Resolved 1st. That the convention return their thanks to the bishop for his kind wishes, and whilst they regret that he should have judged himself under the necessity of *quitting so suddenly the exercise of the episcopal office*; and those solemn and important duties which are connected with it, they beg leave to assure him of their sincere and fervent prayers that Divine Providence may so guide and govern him in all his ways, as will most conduce both to his temporal and eternal felicity.

"2d. That a copy of the foregoing resolution should be transmitted to bishop Provoost, and

"3dly. That it should be recommended to the standing committee, to call a special convention to meet in the city of New-York in the month of November, then next, for the purpose of choosing a suitable person to be consecrated *as bishop, to have the charge of the Protestant Episcopal Church in the state of New-York.*"

The minutes then state, "that the preamble and the first and second resolutions of the report, were adopted by the convention. The last resolution was rejected."

I beg the attention of the arbitrators to some observations on these minutes, which are so important to the question now immediately under consideration. First, it is remarkable that not one word is said of resignation in any part of the report. The committee do not regret that bishop Provoost should have resigned, but that he should have judged himself under the necessity of quitting so suddenly the exercise of his office, and the discharge of its duties. Certainly it is one thing to resign an office, and another to cease to perform its duties.

It is impossible to read these minutes, without perceiving that the committee so far from proposing to accept bishop Pro-

voost's resignation, meant to consider him as holding the episcopate, and to cast a censure upon him for declining to do its duties. It is a fact, that will be proved beyond controversy, that it was a matter of debate among the members of the convention, whether a bishop could or could not resign. That a great majority of them thought that he could not; and, therefore, the third resolution, which proposed to elect a person to *have charge of the church* in the state, was rejected. But afterwards a resolution was proposed, that the convention should proceed to the election of a person, not to have charge of the church, but for consecration *as bishop of the Protestant Episcopal Church* in this state, and the resolution was adopted.

It appears on the minutes, however, that afterwards it was resolved, on motion of Dr. Hobart, that the convention could not act on a memorial which had been presented to them from Christ Church, while the church was destitute of a bishop. And this, it has been said, is evidence that the convention had accepted the resignation of bishop Provoost. Now nothing can be more true, than that the church was destitute of a bishop; because bishop Provoost had left the convention and refused to act, under the idea that he had made an effectual resignation. And the same resolution might with equal truth and propriety, have been passed if bishop Provoost had absented himself from the convention, and declined discharging the episcopal duties, on account of sickness or for any other cause. But it is extraordinary, that notwithstanding this resolution of Dr. Hobart's, that the convention could not act in the absence of bishop Provoost; they immediately proceed to transact their business, as if no such resolution had passed. They audit and pass their treasurer's accounts. They pass a resolution to instruct their delegates to vote against a proposed alteration in the general constitution. They instruct their delegates to vote for the adoption of the articles of religion of the church of England. They elect their delegates to the general convention; and choose their members of the standing committee. They pass resolutions respecting the qualifications requisite for a seat in the convention, and they proceed "to the choice of a person to be

recommended for consecration as bishop of the Protestant Episcopal Church in this state."

Now it seems to me, that none of these acts are less important than it would have been to have decided on a memorial from Christ Church, relative to the situation of their church. And it follows, either, that, notwithstanding the resolution proposed by Dr. Hobart, the convention afterwards discovered that the church was not destitute of a bishop; or if it was so, and it be true that the convention could not act without a bishop, then all the subsequent proceedings of the convention, including the election of bishop Moore, are illegal and void; and of course bishop Moore cannot be the diocesan.

Chief Justice KENT. If the convention did accept the resignation of bishop Provoost, do you admit the election of Dr. Moore to have been regular?

COLDEN. Certainly not; because, then, it must be decided, whether the state convention had power to accept.

EMMET. We contend that the state convention has nothing to do with the making or unmaking a bishop. They have no other power than to elect a proper person to be recommended to the bishops, who are to consecrate or not as they please. The convention in this respect, stands exactly in the place of the dean and chapter in England.

COLDEN. I have concluded the observations I had to offer on the question of diocesan. I will only add, that we admit that Dr. Moore is a bishop of the Protestant Episcopal church, and that as such, he is, to use the language of the house of bishops, competent to all the episcopal duties. But we contend, that he is no more than what he was consecrated to be, that is, an assistant or coadjutor to bishop Provoost, who remains the diocesan. But the vestry chose to consider bishop Moore as holding that office; he assumed the character, and acted in the case of Mr. Jones as such. I shall now bring to the view of the arbitrators the proceedings of bishop Moore, and the tribunal which he assembled, and examine their legality and validity.

Immediately after the resolutions of the vestry were passed, they were communicated to bishop Moore. And two days afterwards, that is, on the seventh of September, a copy of

them was sent, by bishop Moore, to Mr. Jones. Upon the receipt of this copy, Mr. Jones presented to bishop Moore a remonstrance against bishop Moore's proceeding under the canon. This remonstrance, instead of exercising his own judgment in respect to it, bishop Moore sends to the vestry for their advice; and they having requested him to proceed, notwithstanding the remonstrance, he determines to do so. The evidence of this extraordinary communication, between a judge and party, is recorded in the documents before you. It is even made a recital in the very instrument which is intended to seal Mr. Jones's fate. The right reverend bishop, and the reverend doctors and divines who have sanctioned this measure, could not have thought that there was any thing wrong in a proceeding which they have so openly avowed; and it only serves as one evidence, among all the others, of the ideas of impartiality and justice which have governed through the whole course of these proceedings. Bishop Moore, in obedience to the request of Mr. Jones's prosecutors, determines to proceed. Accordingly, on the 15th of October, he sent Mr. Jones notice that he should meet, with his presbyters, on the fifth of November following, to act on Mr. Jones's case, agreeably to the requisitions of the thirty-second canon. Upon the receipt of this notice, Mr. Jones presented to bishop Moore, a more formal and extended remonstrance; in which he protested against bishop Moore's proceedings, on the five following grounds: Because, bishop Moore was not the diocesan. Because, no controversy existed between him and the congregation. Because, if such had existed, no effort had been made, on the part of the vestry to compromise it, and therefore, it could not be said to be of such a nature as could not be settled by the parties. Because, the exception in the canon, as to those states to whose usages it was opposed, prevented its application in this case; and, because, the canon being passed subsequent to Mr. Jones's call, he could not be affected by it.

Whether this remonstrance was also sent to the vestry, for their advice and directions upon it, we do not know; but Mr. Jones having understood, that bishop Moore persisted in his determination to take cognizance of the case, Mr. Jones ad-

dressed a letter to bishop Provoost, inclosing to him a copy of the resolutions of the vestry, informing bishop Provoost that he looked to him as his diocesan, and that he was ready to submit to his authority as such. To this letter bishop Provoost returned an answer, saying, that as Mr. Jones's letter had given him the first information of the proceedings of the vestry, he considered that any interference of his would be premature. This letter, from bishop Provoost, was made the grounds of a third protest, which Mr. Jones presented to bishop Moore. On the fifth of November, however, bishop Moore and some of his presbyters met at the place designated by the notice Mr. Jones had received. On Mr. Jones presenting himself, he found that all the presbyters of the diocese were not present; and that a great majority of the presbyters who were assembled, had taken a decided part against him in the very matters on which they were to set as judges. That many of them had expressed their opinions on his case; and had even gone so far as to assemble and give an *exparte* judgment against him. Mr. Jones also found, that the vestry had sent two of their members, gentlemen of the highest standing in the profession of the law, to appear as prosecutors before this conclave. Mr. Jones presented a protest against the proceedings of the tribunal, embracing all the points which he had before submitted to bishop Moore. He also, verbally, protested against the legality of the tribunal, on the ground of the absence of some of the presbyters. He objected to the competency of many of the assembled presbyters to set as judges on his case, on account of the part they had taken in previous transactions; and also on account of the pre-judgment which they had given. He then left the tribunal. And this, notwithstanding it is certified in the solemn document which purports to be Mr. Jones's judgment, "that Mr. Jones appeared, and was fully heard "in relation to the application of the vestry and case of controversy," is all the hearing that ever Mr. Jones had. Nay, it will appear, that not even the members of the tribunal, who were his friends, and who wished to be heard in relation to the case of controversy, were suffered to deliver their sentiments; but were silenced by an uproar and cla-

mour that would not be very creditable to a temporal court, however it might be in an ecclesiastical tribunal.

Having presented to the arbitrators this view of the proceedings against Mr. Jones, and of the tribunal which was assembled to judge of his case, let me press upon their consideration some extraordinary facts in relation to one and the other. It must be remembered that Dr. Moore, from the beginning of this business, has been, and yet is, rector of Trinity Church. He is the head of the corporation, without whom no act can be legal. At the same time, he is a bishop of the protestant episcopal church, and claims to be diocesan. Then the rector bishop has a controversy with one of the ministers of the church, and applies to the bishop rector to decide. The bishop rector receives a protest against his proceedings, which he sends to the rector bishop for his directions; the rector bishop advises him to proceed. The bishop rector determines to proceed, and actually sits as the head of a tribunal to judge of a complaint which comes from a body, of which he is also the head!

But let us enquire who were the members of this tribunal? I believe it may be confidently said, that there is not one of them who is not a pensioner of Trinity Church; or who is not a dependent on the wealth of that corporation. I speak of the present time, for at the time that this tribunal sat, there was one exception, I mean the Rev. Dr. R. C. Moore. But I understand he has lately, very lately, found favour in the eyes of the church. The names of those who voted against Mr. Jones, appear to the final sentence. They are the Rev. Mr. Wilkins, the Rev. Mr. Bartow, the Rev. Mr. Bowden, the Rev. Mr. Cooper, the Rev. Mr. Phelps, the Rev. Mr. Reed, the Rev. Mr. Bowen, the Rev. Mr. Lyell, the Rev. Mr. Judd, the Rev. Mr. Hart, the Rev. Mr. Bulkley, and, though last, not least, the Rev. Thomas Y. How. It will appear that all these, excepting, I believe, only two, had become so far parties to the controversy which really existed, that is, the controversy between Mr. Jones, bishop Hobart, and Mr. How, that they had given certificates upon the subject; and these certificates appear in Dr. Hobart's letter to the vestry. But above all, that Mr. How should appear as

a member of this tribunal—Mr. How, who is himself guilty of the crime of publishing a book, if it be a crime; and a book in relation to the very matters respecting which he was about to assume the character of a judge.—Mr. How, who had been restrained by no considerations of mercy or prudence in his angry and violent declarations against Mr. Jones. That Mr. How should not only appear as a member of this tribunal, but that he should have acted as the very soul of it, cannot but excite astonishment. His zeal in his new profession, must have obscured the principles of justice which it is to be presumed he had acquired in his former pursuits.

Chief Justice KENT interrupted Mr. Colden, and said, Mr. Colden, I have heard you a long time. You have talked about the clergy in a way that it is painful to hear. One minute you eulogise one clergyman, and the next you condemn another. Some time ago you praised Dr. Moore; and afterwards you insinuated that he had taken a bribe from Trinity Church.

MR. COLDEN. I made no such charge, sir. I merely mentioned what were facts; that Dr. Moore was not a pensioner of Trinity Church when the sentence against Mr. Jones was pronounced; and that they had since voted him a pension. I am convinced that Dr. Moore has not understood me as making a disrespectful insinuation, and was not displeased with what I have said.

Chief Justice KENT. Yes, but my dear sir, I have heard you from beginning to end with disgust. I do not mean as to your speaking or abilities in managing your cause; but as to your treatment of the clergy. Are we to sit here, and in this public assembly hear the church trampled in the dust? It is injuring the cause of religion. You are now speaking of Mr. How. God knows I have no bias any way. I know none of the parties. Mr. How I never saw till yesterday. But if you talk of the clergy as you have done, I'll go home. We came here to hear a cause between the vestry and Mr. Jones. What has Mr. How to do with it? Mr. How is no party, and cannot defend himself. Unless you alter your

manner of speaking of the clergy I'll take up my hat and go right away home. I wont sit here.

MR. COLDEN. In what I have said, sir, I have intended to offend no one. I have intended to make use of no expression which I did not think truth, and the cause I advocate required. If, in the course of a very long address, I have violated this intention, I am sorry for it. But I believe it seldom happens, that a person who finds himself under the necessity of speaking for so many hours in succession, as I have done, does not make use of some expressions which he regrets, and wishes he had an opportunity of clothing his ideas in different language. That a person speaking from the impulse of the moment may not always use the most decorous expression, I should think your honor would admit; and were it not so, I think your honor would not have adopted the language you have just used.

Chief Justice, KENT. Well, sir, I have been very sick. I have been unable to be on the bench all day; and have come out in this bad weather to sit on this arbitration. I am very sorry I had any thing to do with it. I thought it was a mere controversy between the vestry and Mr. Jones; but if I had known what sort of a controversy it was, I never would have sat.

MR. COLDEN. I certainly did not intend to treat Mr. How with any disrespect. I meant to mark with emphasis, that he who appears to have been one of the parties in the controversy which did really exist, that is, the controversy between Dr Hobart, Mr. How, and Mr. Jones, was called to sit as a judge in a case in which the merits of that controversy were involved; and I must be permitted to state further, that we shall prove, that Mr. How not only acted as a judge, but that in the convocation he took upon himself the part of an active and zealous partizan, against the accused: That he it was, who was most clamorous to silence Dr. Moore, when he attempted to intreat the assembly to deliberate before they acted. At this very time Mr. How was a dependant on the pleasure of Trinity Church, for more than half his annual income of eleven hundred pounds a year; five hundred of which only was a fixed salary. It is a fact, also, that

Mr. Jones, being a much older servant of the church than Mr. How, must, according to what has been the usual course of succession to the rectory, have been preferred before Mr. How, to that office, unless his character could be successfully assailed, or his connection with the church be severed by some such proceedings as Mr. How was then taking a part in.

I do not pretend to say, that these circumstances influenced Mr. How. But they are such facts, as no rules of decorum or reverence for the clergy require me to conceal. I never have believed that clergymen were born differently from other men, or that they came into the world with different tempers or dispositions. But I have revered them, because I did believe, that men who were abstracted from all the worldly contentions, in which those who have other pursuits are engaged; whose constant study is the precepts of religion and morality, and whose business it is to teach them to others, would have their own hearts purified. But I regret to say, that what I have seen in the course of this business, has induced me to fear that there are many of the servants of the sanctuary who are as much under the influence of the evil passions of our nature as other men, and that the lowest as well as the highest office in the church, can be as much an object of ambition and envy, as if we poor laymen might contend for them.

But, whatever expressions of irreverence may have escaped me on this occasion, I am confident I can have used none half so reproachful as those which have been applied to Mr. Jones; and even to bishop Provoost; and this too, by reverend divines. Let me ask the arbitrators to look into the volumes of pamphlets written against Mr. Jones which are now before me, and which will be put into their hands; they will see that the language does not afford terms more opprobrious, than those which have been used without any restraint, by the consideration that they are used by clergymen against clergymen.

But I return to the course of proceedings against Mr. Jones.

One of the objections which Mr. Jones verbally made to the legality or competency of the tribunal which he found

assembled to decide upon his case, was, that there were presbyters of the diocese who were not present and who had not been summoned. The canon requires that the reference of the controversies which it contemplates, shall be to the bishop *and his presbyters*. It cannot be disputed, that this means all his presbyters. Now it is very certain that there were presbyters who had not been summoned, and who were not present: among others who were absent, were the reverend Mr. Jarvis of Blomington, and the reverend Mr. David Moore of Staten-Island. These gentlemen were in priests orders; of course they were presbyters: and they were presbyters of bishop Moore, if he was diocesan, because they were settled and had charge of parishes in the diocese; we shall be able to offer evidence as extraordinary, as convincing, that bishop Moore considered the reverend Mr. Jarvis as one of his presbyters. The reverend Dr. Richard C. Moore, the reverend Dr. Harris, and the reverend Mr. Feltus, as appears by the documents before the arbitrators, entered a protest against bishop Moore's acting as the diocesan; and consequently against the proceedings of the assembled presbyters convened by his authority. Some time after the sentence against Mr. Jones had been pronounced, bishop Moore gave Mr. Jarvis a written order not to permit either of the gentlemen who had protested, to officiate in his pulpit! Can there be more convincing evidence of any thing, than this is, that bishop Moore considered Mr. Jarvis one of his presbyters.

But I cannot pass over this interdiction of the gentlemen who protested with so slight a notice; it does appear to me, one of the most tyrannical proceedings I ever heard of. These gentlemen are called, as members of a tribunal, to exercise their judgments on a case which is presented for their consideration; they proceed according to the dictates of their judgments and consciences; and because the opinions they deliver are not pleasing to the bishop, they are punished. Was there ever such an outrage upon justice? Knowing, as I do, that these things have taken place, is it extraordinary that I should express with some warmth and zeal, that abhorrence of them which I feel? And which I trust every man who hears me, will feel.

But to return to the consideration of the objection on account of the absence of some of the presbyters: It will hardly be denied, that Mr. Jarvis, Mr. Moore, and several other priests, having parishes in the state, who were absent, were presbyters of the diocese. If the canon required their presence, the proceedings of the tribunal, without them were illegal and void. Independently of the wording of the canon, which however can leave no doubt on the subject, it is obvious, that a question of this nature ought not to be left to the decision of a part of the presbyters. If a part may form a competent tribunal, what part must it be? Shall it be a half, a third, or less? or shall the bishop not only be at liberty to determine the number, but to select such of the presbyters as he may please? If this should be established as the law of the church, from that moment no clergyman could be considered as holding an independent living. The most trifling difference between him and his vestry, might be magnified into a controversy; and if two or three presbyters, from envy or interest, should be inimical to him, they might be assembled by the bishop, and they might treat him as Mr. Jones has been treated. Indeed the clergy who sanction these proceedings, in their zeal to punish Mr. Jones, are taking the most effectual means to destroy their own independence and respectability.

Mr. Jones having quit the tribunal, a scene ensued which I shall not attempt to describe, further than as relates to the conduct of the members to the reverend Dr. Moore. It has been already mentioned, that this gentleman, with Dr. Harris and Mr. Feltus, entered a protest. Previously to their doing this, however, Dr. Moore attempted to speak in favour of Mr. Jones. For fear what he should say might be misrepresented, Dr. Moore had the precaution to reduce to writing the speech he intended to deliver. I am happy that we have it in our power to present it to the arbitrators; it is as honourable to the head as to the heart of the author: it will be found extremely apposite to the questions which the tribunal ought to have discussed, and is in the most conciliating and respectful language. But as soon as it was understood that Dr. Moore meant to question the authority of bishop

Moore, and that, he intended to palliate or excuse Mr. Jones's conduct, he was interrupted—he was accused of insulting the bishop, and of discussing points which were irrelevant. Again and again did Dr. Moore attempt to proceed in reading his speech; but again and again was he interrupted by an almost general clamour. Indignant at the treatment he had received, and at the disposition it manifested; he refused to finish his speech, although he was, after so many interruptions, sarcastically invited by some of the members to do so.

I shall forbear to make any other observations on this conduct, because the force of them could not be felt unless the arbitrators had heard the eloquent speech to which I have referred.

The gentlemen who protested, having withdrawn, Mr. Jones was left entirely to the mercy of the bishop, who was, as I must again remind the arbitrators, in his quality of rector, a party complainant, and of the certificate makers. They completed their work; and that same evening, at about eight o'clock, Mr. Jones was served with the document which I will now read.—(*See p. 7—10.*)

The original manuscript which was served on Mr. Jones, I have now in my hand; it is dated the 5th of Oct. This is not a mere error of the pen. It is the true date of the instrument. For we shall prove that the very paper which I now hold, was already prepared before the meeting in November. That when it was wanted at that time, it was sent for, and was produced for the signature of the bishop and presbyters, with all the dates and sums filled up, precisely in the state in which the arbitrators now see it. So far had the measures of the tribunal been preconcerted, and so firmly had the fate of Mr. Jones been fixed by these impartial judges! We shall prove by the declarations of a very active, though not a very prudent member of the tribunal, made previously to the meeting in November, that all these matters had been preconcerted, and that the result would be such as it has been.

But the date is not the only extraordinary part of this instrument. There are other matters appearing on the face of it which deserve some consideration. Upon the recital which it contains, that Mr. Jones's remonstrance had been

sent to the vestry, and that he had been fully heard, in relation to the controversy, I have already remarked. The arbitrators will perceive too, by this document, how much, in the course of these proceedings, has rested on the individual will or determination of the bishop. He, in the first instance, of himself, and without the concurrence of his presbyters, undertakes to decide that the application of the vestry is one that comes within the purview of the canon. Now, if we recollect that the bishop here speaking, is himself the head of the vestry from whence the application comes, what a mockery of justice do all these solemn recitals appear? Was there ever before such an instance of the same person being party, judge, and executioner?

Again; any man, not otherwise informed, would certainly suppose, from reading this document, that no other presbyters had been assembled than those who signed it; and he could have no suspicion that it was not the unanimous act of all who were assembled. Mr. Jones, says the bishop, had been served with a notice to appear before "*me and my presbyters.*" And then, again it is said, that "we, the said bishop and his presbyters, who have subscribed these presents, were duly assembled." Now would this language lead any one to suspect that there were presbyters assembled who had not signed? Much less could they suspect that there were several venerable and respectable divines, who had entered a solemn and formal protest. The omission of so important a circumstance, among all the particular recitals which this instrument contains, can only be accounted for upon the supposition that it was fabricated before the meeting in November; or that there was a design to impose it on the world as the unanimous act of the assembled presbyters, and to keep out of view that such men as Dr. Harris, Dr. Moore, and Mr. Feltus, had dissented from the proceedings.

This sentence, by which Mr. Jones was to be reduced from affluence to poverty; which required him to relinquish an income of eleven hundred pounds a year, and to live upon seventy; which was to separate him from his friends, and drive him from his native city; which, at an advanced age, was to turn him on the world with a degraded character, was

served on Mr. Jones at about eight o'clock in the evening of the day it was passed. It will be seen, that it requires an answer by one o'clock the next day. Did they who pronounced this dreadful sentence recollect, that Mr. Jones was a husband and a father? Did they recollect that he had a wife to whom he was to communicate the dreadful tidings which this paper bears? Did they recollect that he had daughters, who he was to reconcile to the cruel fate it denounces? Had they none of those sympathies which are so honourable to men, when they allowed Mr. Jones but a few hours to deliberate on the hard alternative they offered him? I happened to be present when the familiar of the holy office appointed to deliver the sentence executed his commission.—While the weeping mother and trembling children were looking on him with horror, I saw him, after he had performed his task, seat himself by the side of the distracted father, and with the calmness and familiar manner of a visiting acquaintance, rub his hands and ask “how is the family?” It appeared to me like planting a dagger in a man’s breast, and asking him how he felt.

On the same evening that Mr. Jones received this decree of the conclave, he sent it to bishop Provoost, under cover of a letter, asking his advice. Bishop Provoost returned Mr. Jones an answer, saying, that he thought the proceedings unauthorized by the constitution and canons of the church; and were not sanctioned by the principles of our religion or humanity. He therefore advised Mr. Jones to disregard them.

The next day, at the appointed hour, the assistant bishop and his presbyters met. Mr. Jones sent them the letter he had received from bishop Provoost; and they pronounced their final sentence, interdicting Mr. Jones from exercising the office of a priest, either in this diocese or in any other in the United States.

It is from this sentence that he now appeals to you. If there was no controversy between Mr. Jones and his congregation, or if there was not such a controversy as the canon applies to.—If no efforts were made to settle it.—If bishop Moore was not the diocesan.—If the tribunal which passed

the sentence was not convened according to the laws of the church.—If the members, or any of them, on account of their connection with the controversy, or on account of their connection with, or dependence on the vestry, were incompetent judges—you will decide that the proceedings were illegal, and that the sentence is void. Mr. Jones will then have a right to claim that station, the duties of which he discharged for so many years with a zeal and piety which should be an example to others.

But by the articles of submission it is agreed, that the quantum of compensation which should be allowed to Mr. Jones, shall be considered as open for adjustment and settlement by the arbitrators; notwithstanding any decision of theirs, establishing the validity of the suspension. Though the event contemplated by this provision, we are confident cannot happen, yet it is proper that I should bring it to the notice of the arbitrators. I rejoice that the painful and laborious task I have had to perform is so near a conclusion; and that I shall have but a few words to say on this subject.

The compensation which the impartial, generous, and magnanimous presbyters awarded to Mr. Jones, out of the inexhaustible treasures of Trinity Church, is one thousand pounds, affording, for the support of himself and his family, a revenue of seventy pounds a year;—about a twentieth part of what Mr. How was receiving from the same source, at the moment he pronounced this sentence.—For let it be remarked, that Mr. Jones and the presbyters attached to Trinity Church, who were his unbiassed and disinterested judges, were, at the time the sentence was pronounced, in the annual receipt of eleven hundred pounds from the rich coffers of Trinity Church, besides perquisites, such as marriages, christenings and the like, which, by the blessing of God, were of no inconsiderable amount.

Let me remind the arbitrators, that Mr. Jones held his place under a contract for life. He, therefore, very justly calculated that he could not be deprived of it, unless he should be legally convicted of some misconduct that would render him unfit to discharge the duties of his sacred office. Relying that his contract and the purity of his conduct would

always secure to him the means, he had lived in a style becoming his station; and had reared his family with correspondent ideas. How must they feel their change of fortune? They may well turn to these righteous judges, and ask, what have we done—what has our father done, that you will bring this affliction upon us?

With what detestation I should hear a cold hearted presbyter answer these innocent victims, “the good of the church requires it—go work for your living.—It is for the good of the church that you and your parents should be reduced to poverty.” This must have been the answer, for the reverend divines, who have pronounced the father’s doom, do not pretend that they have tried him for, much less that they have convicted him of, any offence. On the contrary, they seem to exult in the success of that ingenuity by which they have contrived to effect his ruin, without even affording him the forms of a trial. When the friends of Mr. Jones have said there was no mercy in the punishment they have inflicted, the answer has been—He is not punished. He was not even accused of any crime. He does not therefore suffer for demerits, but because the good of the church requires it.—Most true it is, that there never was even an accusation against Mr. Jones; for the very delegates of the vestry, who were sent as his prosecutors before their dependents, declared to the assembled presbyters, that they had nothing to allege against the morals, the piety, or the zeal of Mr. Jones. They only asked, that they would consign him and his family to poverty, because the good of the church required it!

Will the arbitrators believe, that the cause of religion could require that an innocent man and his family should be thus sacrificed? What would one of the present incumbents of the vestry say, if he were told that the good of the church required that he should resign his present income and live on seventy pounds a year? Notwithstanding all the zeal for the good of the church, which is to justify the proceedings against Mr. Jones, I fear we should hear some bitter murmurings.

Mr. Jones stands before the arbitrators, by the confession of his adversaries, an innocent, unoffending man. Why is

he to be banished, degraded, and impoverished? The good of the church cannot require such an unrighteous sacrifice. If Trinity Church would dissolve their contract, and separate from Mr. Jones, let it be done on just principles. This cannot be, unless they afford him a competency for the support of himself and his family: To suffer them now, after he has faithfully and zealously served them for so many years, when he is advanced in life, to degrade him, to banish him, and turn him and his family on the world in poverty, would be to sanction the most cruel injustice.

I have now but a word more to say. I well know how intimately the welfare of society is connected with a reverence and respect for religion, and for its professors. That the discussion of this cause has disclosed things which may tend to take from the respect which ought to belong to some, who are connected with it, I deeply regret. But let me repeat, that if I have said more that may have this tendency, than my cause, and truth and justice required, I am sincerely sorry for it. Many of the vestry are my most intimate friends; many of them, who I now see here, I most sincerely love and respect: and I shall indeed be sorry, if I have, unnecessarily, said one word to offend them.

Though I know, by many, I am looked upon as an outcast of the religious society to which I belong, my own conscience approves the part I have taken. If I know myself, I am actuated by no motives but such as deserve approbation—certainly they are disinterested. No man who is actuated by mere motives of interest, would court the frowns of so influential a body as that of the vestry of Trinity Church. Towards Mr. Jones, I have not those obligations which commonly bind an advocate to his client. I have not, and never will receive any pecuniary consideration from him. But if my feeble exertions shall tend to rescue him and his innocent family from distress, I shall have all the reward I ever expected, and all I will ever receive.

After Mr. Colden had sat down, the reverend Mr. Lyell had some conversation with him. On which

Mr. COLDEN addressed the arbitrators, and said, the reverend Mr. Lyell informs me, that I have made a mistake,

which he desires me to correct. He says, he did not rub his hands, and ask how are the family, *after* he had delivered the sentence to Mr. Jones, as I have represented; but that it was *before* he delivered it, the enquiry was made.

Mr. Colden having closed his remarks, and some progress being made in the examination of witnesses, the arbitrators adjourned on the 9th of May, to meet again at the city of Albany, on the 27th day of July following. It was also agreed between the parties, that during the period of their adjournment, the testimony in the case should be taken, before a commissioner, or some other person duly authorized, to be appointed by the arbitrators; and that all the testimony, so taken, should be returned into the hands of the commissioner, on or before the 15th of July 1813.

TESTIMONY

IN THE CASE OF THE

**REV. MR. JONES AND THE VESTRY OF
TRINITY CHURCH.**

ALBANY, JULY 27th, 1813.

The arbitrators in this case all attended.

PRESENT,

Chief Justice KENT,

The Hon. S. THOMPSON,

The Hon. A. SPENCER,

The Hon. W. W. VAN NESS,

The Hon. J. C. YATES.

THE testimony which had been taken, since the last meeting of the arbitrators, having been presented to them; the answer of the Rev. ABRAHAM BEACH, D. D. and of Mr. ISAAC LAWRENCE,* were objected to, on the part of the defendants, as having been taken several days after the expiration of the time to which the parties had been limited, by agreement, to examine witnesses.

A few remarks were made by the counsel for the plaintiff, upon which the arbitrators determined, that they could not be received as testimony in this case.

New-York, ss. FREDERICK DEPEYSTER of the city of New-York, merchant, a witness produced on behalf of the plaintiff, being duly sworn, deposeth and saith, that he was a member of the vestry of Trinity Church in the year 1798 or 1799, and continued so until they did him the honour to turn him out in the year 1812. During that time the plaintiff was called as an assistant minister of that church, at a

* For these answers, see Appendix.

salary of five hundred pounds a year; which was the general salary given to all the assistant ministers. Upon, or soon after the call of the plaintiff, the vestry made an annual allowance to all the clergymen of Trinity Church, of five hundred dollars each, in addition to their salary; and afterwards, on the suggestion of Dr. Hobart, the additional allowance of five hundred dollars was granted for seven years. Some time after, but when, particularly, he does not remember, a gratuity of one thousand dollars a year was given to each of the ministers of Trinity Church. It was generally understood that the allowances above mentioned were to be continued from year to year, as he presumed. The deponent considered this allowance within the power of the vestry to withhold, but he presumes that they would not withhold it:—that at the time he left the vestry, the plaintiff and the other assistant ministers of Trinity Church received eleven hundred pounds a year, including the gratuitous allowances aforesaid:—that some months after the first report of the committee of the vestry of Trinity Church upon the plaintiff's book, entitled "A Solemn Appeal," he the deponent observed in the vestry, that if Dr. Hobart and Mr. How would take half the pains to extinguish the flame, that they had in fanning it, that all would be peace:—that this expression was made when the vestry were engaged in conversation, in relation to the state of the church. He has always considered that the differences in the church were confined to Dr. Hobart, Mr. How and the plaintiff:—that the deponent was induced to express the opinion above stated concerning Doctor Hobart and Mr. How, from the circumstance of having been called upon by both those gentlemen; and hearing that they called on others, respecting the difference between themselves and the plaintiff:—that he considered that the call of Doctor Hobart and Mr. How upon him, was in his capacity as a member of the vestry of Trinity Church:—that the deponent had several conversations with Doctor Hobart and Mr. How on the subject of the plaintiff:—that he does not recollect any thing harsh, or improper, said by Doctor Hobart, except the expression of Doctor Hobart, that the plaintiff ought, or must quit the diocese; but the precise words he cannot recollect—

the expressions were strong and decided, but not harsh, or indelicate. One of his conversations with Doctor Hobart lasted two or three hours:—that in one of the conversations which the deponent had with Mr. How on the subject of the difference with the plaintiff, his expressions were vehement, all tending to the necessity of the plaintiff's quitting the diocese, or parish, which, he does not remember:—the said Mr. How said that the plaintiff was a turbulent and dissatisfied man, who would keep the church in confusion; the precise words he does not remember; but the purport was, that the plaintiff was so here, when in college, and while residing in Virginia:—that this struck the deponent as strange, having never heard any thing like it before concerning the plaintiff; and upon inquiry respecting his conduct in college, the deponent found the information of Mr. How incorrect, but he believes Mr. How had been so informed, or that he would not have said so:—that Mr. How in the same conversation before referred to said, that the plaintiff was a rascal and villain, and upon being remonstrated with by the deponent, he said, that he thanked him for checking him. The deponent does not remember any other expressions used by Mr. How that were exceptionable; he has no recollection of more than two conversations with Mr. How on the subject of the aforesaid difference:—that the last conversation, and the one in which the expressions before mentioned past, was at the house of the deponent:—that from the facts within the knowledge of this deponent, he is of opinion, that the vestry would not have proceeded any further against the plaintiff than the first censure, if they had not been goaded on by Doctor Hobart and Mr. How. The report of the committee on the state of the church, which was made in September, recommended an application to the bishop and his presbyters, on the subject of the difference with the plaintiff:—the deponent supposed that the above committee was appointed for the purpose of considering of the expediency of separating St. George's and St. Paul's Churches, and the various applications of other churches, for assistance, and were to continue until those subjects were disposed of: he believes that the committee was appointed in the spring of 1810 or 11. There

never was to his knowledge any special reference of the matters in difference with the plaintiff, after the report of the committee, to whom the plaintiff's book was referred, had been agreed to; nor a word spoken on the subject afterwards in the vestry, to his knowledge. The deponent had no previous knowledge that it was intended to take any steps respecting the plaintiff at the meeting of the vestry which received the report of the committee in September 1811—that the circumstances, in relation to this business, made no distinct impression on his mind, and he cannot pretend to accuracy either as to dates or circumstances, but that he is very certain that he had no expectation of hearing any such report or proceeding, when he went to the vestry on that day. That the vestry, on the day the report aforesaid was made, received a letter from the plaintiff, of which no notice was taken by the vestry; whereupon the deponent asked, “what order was to be taken upon the letter,” and he was answered, that it would be filed. The deponent is well satisfied that no other communication passed between the plaintiff and the vestry, after the resolution of the vestry in the month of May 1811, until the aforesaid report in September following. He has never heard that any official notice was given to the plaintiff that any difference existed between the vestry and him; and he does not believe that any such notice has been given. And the deponent never considered, that such difference ever did exist; and if it did exist, no means were ever taken by the vestry to heal it, to the deponents knowledge or belief. The deponent says, that of the presbyters who sat on the question between the plaintiff and the vestry of Trinity Church, all except two or three had received aid, or were in expectation, directly or indirectly, of aid from the said vestry:—that an annual donation of five hundred dollars, which had been paid to Dr. Harris for several years, was stopped after the protest of Dr. Harris to the proceedings of the presbyters, and the deponent has not a shadow of doubt, that the said allowance was withheld, in consequence of Doctor Harris having made the said protest, and the dignified stand he took with the plaintiff in the controversy between him and Doctor Hobart and Mr. How; and because he would

not join in the prosecution and persecution of the plaintiff by those gentlemen, and would not bow to those gentlemen :—that there is no fixed mode by which the donations to ministers not belonging to Trinity Church are given, but it is altogether dependent on the will of the vestry.

The deponent on being cross-examined says, that, according to his opinion, there was no difference between the vestry and the plaintiff anterior to the report of the committee on the state of the church, and subsequent to the report of the committee on the plaintiff's book :—that from the time of the report of the committee on the state of the church, the vestry became parties to the controversy, as he understood :—that according to his understanding, there was no dispute, or difference between the vestry of Trinity Church and the plaintiff at the time the committee, to whom the plaintiff's book was referred, made their report, and the resolution of the vestry thereupon, except what was embraced in that report and resolution :—that there was not, according to the understanding and belief of the deponent, any misunderstanding or difference between the plaintiff and the congregation of Trinity Church, between the time of the publication of the plaintiff's book and the report of the committee on the state of the church, excepting among a few ladies :—that he did hear, that two or three ladies, between the periods before mentioned, had refused to hear the plaintiff preach : and the deponent heard others say the same with respect to Dr. Hobart and Mr. How ; all owing to the same controversy. He cannot say, that there was a state of uneasiness in the congregation, in relation to the said controversy, because, with all the pains taken to promote it, it was confined to very few :—that the deponent was left out of the vestry in consequence of the difference that subsisted between them and the plaintiff ; but that very unfair means were resorted to, in order to effect that object ; such as a report, that he, the deponent, declined a re-election. The deponent says, that it was usual to agree upon a ticket previous to an election of vestrymen ; that such ticket was agreed upon at that time, and his name was upon it ; and that afterwards some person, at the store of Mr. Swords, struck out the deponent's name, and with a pen

substituted the name of Mr. Skinner, which ticket was circulated as the ticket of the vestry, as the deponent was informed and doth believe. Sometime after the publication of the plaintiff's book, the deponent called on Dr. Hobart in relation to the controversy between the plaintiff and him;—at the time it was determined in the vestry not to continue the gratuity of five hundred dollars a year to Dr. Harris, he did not hear it assigned publicly as a reason that Dr. Harris received five hundred dollars from the college, and he does not believe that that was the reason—but an individual of the vestry mentioned the circumstance privately to the deponent :—that what he has said in this examination respecting the vestry having been goaded on to take steps against the plaintiff, he has no personal knowledge of, except what he has stated respecting Dr. Hobart and Mr. How's calling upon him; all the rest is from what he has heard from others—who said, that they had been conversed with by those gentlemen on the subject :—that all the ministers belonging to the episcopal church in the state of New-York, either had, or expected to receive aid from the vestry of Trinity Church, in the same sense and manner as he means to be understood in relation to the presbyters who sat in the business of the plaintiff.

GARRET H. VAN WAGENEN, as examined before the arbitrators personally ;—Was a member of Trinity Church. Always understood the call for life, except for some mal-practice to be proved. Was a member of the vestry, when the resolution was adopted expressive of their disapprobation of Mr. Jones's publication. Dr. Hobart called at his house next day, and observed, the vestry had not done any thing,—had not done half enough. Witness replied, they had done too much. And remarked that his reason for so saying was, that it was not their concern. They had nothing to do with it. Dr. Hobart said, his character was suffering.

Being cross examined: Witness knows of no act interpreting the call; but his opinion is founded on general conversation and communications with the vestry. On account of this opinion, Mr. Berrian was called during pleasure. Mr.

Jones shewed the manuscript to witness, who dissuaded him from laying it before the convention : said it would be injurious to himself and to the church. Dr. Hobart was then considered as the candidate for the episcopate : was spoken of as a person contemplated to fill that office.

THOMAS HAMERSLEY, also examined before the arbitrators : —Some time, about a fortnight after the consecration, Mr. Irving and himself had a conversation with Dr. Hobart, who said Mr. Jones must quit the church. Afterwards in the course of conversation, witness proposed some detached church, by which he might have a seat in convention. Dr. Hobart said, as to that, he must quit the diocese. This he conceived to be in consequence of Dr. Hobart having lost confidence in Mr. Jones.

New-York, ss. WILLIAM IRVING of the city of New-York, merchant, a witness on the part of the plaintiff, being duly sworn, deposeth and saith, that shortly after the publication of the plaintiff's book entitled "A Solemn Appeal," he happened accidentally to go into the store of Mr. Hamersley in the city of New-York, where he found Doctor Hobart and the two Mr. Hamersley's in conversation on the subject of the plaintiff's book : the conversation continued after the deponent entered the store for an hour, or an hour and a half ; in which time Doctor Hobart entered very freely into the subject, and endeavoured to explain, and justify himself against all the charges contained in the plaintiff's book against him. After the conversation on the subject of the book had ended, some one present expressed a wish that the subject in difference with the plaintiff might be settled, and that that was the wish of the plaintiff himself ; who, this deponent said, had in his opinion suffered enough, for any indiscretion he had been guilty of ; upon which Doctor Hobart replied, that he could have no confidence in the plaintiff ; that he had sufficiently tried accommodation heretofore ; alluding, as the deponent supposed, to other subjects, and that he was wearied of it ; and he then appealed to the persons present, how they would like in their business to be connected with one

who was always dissatisfied, suspicious, and noting down private conversations. Upon which the deponent remarked, that he did not think the connection of Dr. Hobart with the plaintiff, was analogous to that of copartners in business, especially as Dr. Hobart was now a bishop, and the plaintiff remained an assistant minister; and it would be his duty to obey. Dr. Hobart then said, that the plaintiff was a turbulent, factious man, and might have it in his power to make the situation of the bishop very unpleasant, and might occasion disagreement and dissatisfaction in the convention; and mentioned several other cases that might arise, in which the plaintiff could render his, Dr. Hobart's, situation very disagreeable; the deponent then observed that he could not see how these things were to be remedied by ejecting the plaintiff from Trinity Church, because he might still be called either in the city or in the country within the diocese, and so remain a member of the convention. Dr. Hobart replied, "Oh sir, he must go out of the diocese," and upon going round the counter, Dr. Hobart repeated the same thing. The deponent saith, that there was nothing harsh in Dr. Hobart's manner, on the foregoing occasion; and Dr. Hobart said, that he had no hostility to the plaintiff; that he wished him and his family well; that Trinity Church might pour its wealth into his lap; but that, as the head of the church, he believed its peace and welfare required that the plaintiff should leave the diocese. Dr. Hobart also observed, that he was so wearied of the controversy, that if it was not that he was placed in the church as he then was, (alluding, as the deponent understood, to his being bishop) he would withdraw from Trinity Church, and leave it in peace; and added "You gentlemen only think and converse on this matter occasionally, but my head and heart are full of it." Dr. Hobart also observed, that if the vestry of Trinity Church had done its duty in the first instance, it would have occasioned a small ferment, but which would then have all subsided, and the church would have been at peace. Mr. T. Hamersley said that he thought the vestry had gone far enough, and that he hoped, or expected, (the deponent does not remember which) that they would do no more; upon which Dr. Hobart replied rather jocosely,

"well, I know what I can do," and upon being asked by Mr. Hamersley, what that was? Dr. Hobart replied, "I will not tell you," I can keep my own counsel, and you, at any rate, will give me credit for energy of character. All which was said as Dr. Hobart was leaving the store, and in the same jocose manner before mentioned. The deponent has no personal knowledge of any means having been taken by Dr. Hobart, or any other of his particular friends, to excite clamour against the plaintiff. The deponent says, that some time after the conversation with Dr. Hobart, he received from Mr. Swords a pamphlet marked "Private," which was Dr. Hobart's letter to the vestry of Trinity Church. The deponent was not a member of the vestry; he cannot remember the time when he received the above mentioned pamphlet, but knows that it was very soon, within a few days, after it was printed. Mr. Swords, who brought it to him, and who was the publisher, is a very particular friend of the deponent; and would, as the deponent believes, very naturally have given him the pamphlet of his own accord. The deponent says, that another edition of the same pamphlet was afterwards advertised and sold by Sargeant, a bookseller.

New-York, ss. FRANCIS DOMINICK, of the city of New-York, gentleman, aged seventy-six years and upwards, a witness on the part of the plaintiff, being duly sworn, deposeth and saith, that he was a member of the vestry of Trinity Church at the time when the plaintiff published his book, entitled a "Solemn Appeal," and had been a member for about fifteen years previous, and continued a member until April, 1812. The deponent always considered, that the tenure of the office of an assistant minister of Trinity Church was for life, until lately that Mr. Berrian was called during pleasure, which the deponent considered a departure from the usual course. The call of Mr. Berrian was made subsequent to the controversy between the vestry and the plaintiff. The deponent remembers a Mr. Bissett, an assistant minister of Trinity Church, whom the vestry were very desirous of getting rid of, on account of his intemperance, and it was thought by the vestry that they could not effect this but by proceeding a-

gainst him for misconduct ; and they therefore took measures to prevail on him to resign, which he did. The conduct of the vestry was very tender towards Mr. Bissett on that occasion. And further he saith not.

New-York, ss. JOHN IRELAND, of Brooklyn, in the county of Kings, in the State of New-York, a witness produced on the part of the plaintiff, being duly sworn, deposeth and saith, That he was a member of the general convention in 1801, when bishop Moore was consecrated, and attended as a clerical delegate from the diocese of New-York ;—while in session in the lower house, the clerical delegates from the diocese of New-York received a communication from the house of bishops, requesting an interview, and they all accordingly attended in the room where the bishops were assembled ; and bishop White, as presiding Bishop, informed them, that they had taken into mature deliberation the proposed resignation of bishop Provoost, and, that among other objections to receiving his resignation, they considered such a measure unprecedented in the church ; and that the object of calling upon them, was to enquire whether any one could remember a single instance of a bishop's resignation. After waiting for some time, the deponent expecting that some of the delegates who were senior to him would make a reply, he observed, that he had no doubt if time was allowed, that such an instance could be produced ; but taken by surprise, he, the deponent, at that moment could not recollect one. And each of the other clerical delegates being interrogated, respectively replied, that they could not recollect any such instance. Bishop White then asked, how they could expect the house of bishops in this country, in the infant state of the church, to set such an example. The delegates then began to deplore the destitute state of the church in this diocese, without a bishop ; when bishop White observed, that the church should not be left destitute, for that they would consecrate Dr. Moore an assistant bishop to bishop Provoost. The deponent thereupon observed, that Dr. Moore had been elected by the state convention as the diocesan, and that consequently he could not be offered to the house of bishops

as an assistant ; to which bishop White replied, that as the greater included the lesser, he presumed that those who had elected Dr. Moore as diocesan, could have no objection to his consecration as an assistant bishop ; to which all the delegates acquiesced and withdrew. Afterwards, on a communication from the house of bishops, the lower house attended the consecration of Dr. Moore ; and the deponent understood, and as he firmly believes every other member in both houses understood, that he was consecrated an assistant bishop to bishop Provoost. The deponent says, that he is certain, that it was then understood, and as he believes by every member of both houses, that bishop Provoost's resignation was not then accepted. The clerical delegates who attended from this diocese in the general convention as aforesaid, were Dr. Beach, Mr. Wilkins, Mr. Hobart, and the deponent, who he thinks all waited on the house of bishops as aforesaid. The deponent says, that immediately after the interview with the house of bishops as aforesaid, he wrote to Dr. Moore, requesting him to come on without delay to Trenton, which he did, and was met at the stage-house by the deponent and several of the clerical and lay delegates, who had an interview with Dr. Moore, and explained to him all that had passed, and what is herein before related respecting his intended consecration ; and particularly, that the clerical delegates from New-York, had acquiesced in his, Dr. Moore's consecration as an assistant to bishop Provoost ; to which Dr. Moore replied, that if he had known so much before he left home, he would not have come on. The deponent has a distinct recollection of the preceding observation of Dr. Moore, because he at the time chided the deponent, in terms of severity, for not having communicated to him the terms on which he was to be consecrated bishop, as he did also another person present, who the deponent understood had likewise written to Dr. Moore on the subject. The deponent says, that he has never had a doubt from the time of bishop Moore's consecration to the present, that bishop Provoost was the diocesan of this diocese, but he did suppose that an arrangement had been made between bishop Provoost and bishop Moore, by which bishop Provoost had delegated to bishop

Moore the authority under which he acted; and he thinks that bishop Moore had no authority conferred by his consecration, but what was spiritual. On being cross examined, the deponent says, that the power which he supposed had been delegated by bishop Provoost to bishop Moore, was the power to perform certain spiritual acts within the diocese; the deponent has since understood from bishop Provoost, that he never had delegated any power to bishop Moore. The deponent thinks that the whole of the delegation from New-York to the general convention were present at the aforesaid interview with Dr. Moore at Trenton; he is certain that Dr. Beach and Mr. Hobart of the clerical, and Mr. John Reid of the lay deputies were present. The person herein before alluded to as chided by Dr. Moore, was John Reid of Poughkeepsie. And further the deponent saith not.

New-York, ss. PETER G. STUYVERSANT of the city of New-York, a witness produced on the part of the plaintiff, being duly sworn, deposeth and saith, that he is a member of the episcopal church in the city of New-York; that some time in the month of October in the year 1811, and, as he believes, in the early part of the month, he had a conversation with the Rev. Mr. Lyell, in which he told the deponent that the bishop had shortly before that held a convocation of his presbyters to decide on the case of the plaintiff under the 32d canon; and that the convocation had determined, that a separation should take place. That the vestry were to pay the plaintiff his salary and one thousand pounds—that after that determination, Mr. Harison informed them, that their proceedings had been irregular—that Mr. Jones ought to have been summoned to appear before the convocation, and Mr. Lyell added, that Mr. Jones had been, or would be, summoned to appear before the convocation that would be summoned for the 5th of November then next, when they could make the same decision. The deponent understood from the aforesaid conversation, that Mr. Lyell was one of the convocation who met in October aforesaid; and further the deponent saith not.

New-York, ss. SAMUEL HASKILL, of the town of Rye, in the county of Westchester, a witness produced on the part of the plaintiff, being duly sworn, deposeth and saith, that he was one of the members of the special convention, held in May 1811;—that in that convention it was proposed by Dr. R. C. Moore and Dr. Harris to postpone the election of an assistant bishop, on account of some subsisting differences between some of the clergy of the city of New-York, and until they were adjusted; and particularly as the person considered as the candidate was involved in those differences; the deponent cannot remember the words used in reply by some of the delegates from Trinity Church, but he was led to believe from their observations, that they considered the difference or controversy to be of a personal or private nature, and not of a kind tending to affect the interest of the church; and that therefore the postponement of a choice of a bishop ought not to take place in consequence of those bickerings or differences between the clergy, and accordingly the motion to postpone was overruled. The deponent was not present at, nor had he any knowledge of, any meeting of presbyters previous to that which was held in November 1811, on the subject of the difference between Trinity Church and the plaintiff. At the meeting of the presbyters in November 1811, the plaintiff made a verbal protest against their proceeding, on account of all the presbyters of the diocese not having been summoned; and that there were presbyters present who had pre-judged the case; and that some of the presbyters were parties concerned; these were the grounds which the plaintiff mentioned against the proceeding of the presbyters as well as the deponent can recollect. Mr. Harison attended on behalf of Trinity Church, and addressed the meeting of the presbyters for a considerable time without interruption. As far as the deponent recollects, the principal object of Mr. Harison's address appeared to the deponent to be to establish the point of bishop Provoost's resignation of the jurisdiction of the church; and that bishop Moore was the diocesan. Mr. Harison then went on to state the unhappy differences that were in the church, produced by the publication of the plaintiff's book, entitled "A Solemn Appeal," and

that those differences had got to such a height in the congregation or church as that there was no probability of their being settled, so long as the plaintiff continued in Trinity Church, and inferred from these circumstances the necessity of a separation taking place between the plaintiff and Trinity Church. Mr. Harison said that they had nothing to object to Mr. Jones of immoral conduct or neglect of duty. Dr. R. C. Moore also delivered an address in the meeting as one of the presbyters, and was interrupted three times, according to the best of the deponent's recollection;—on the third interruption D. Moore broke off his address without concluding. He thinks that the nature of the objections made to Dr. Moore's address were that the address was invective and irrelevant; in one instance bishop Moore interrupted Dr. Moore, as he thinks; but does not remember the name of any other person who did interrupt. The deponent recollects that Mr. How spoke at considerable length on the subject of the differences, and urged the expediency of the plaintiffs withdrawing from Trinity Church; observing that he had no personal enmity to the plaintiff, but he was influenced by motives to further the interest of the church. The deponent does not recollect that Mr. How was interrupted; nor of any other person being interrupted except Dr. Harris and Dr. Moore. The deponent says that he did not vote for the displacement of the plaintiff, but against it; because from what passed in the convention in May 1811, he was of opinion that the controversy was of a private and personal nature, and that therefore it did not come under the particular canon on which the bishop and his presbyters acted; and that if it did, that the dispute or difference had not arisen to such a height as to preclude all hope of an amicable adjustment of those differences; provided proper means had been used to produce that adjustment. The deponent says that Dr. Moore, Dr. Harris, and Mr. Feltus protested against the proceeding of that meeting, and withdrew: and after the deliberations were closed the meeting was detained some time, and, as the deponent understood, until an instrument of writing was searched for in the room, and afterwards sent for, was brought in, and, as he believes, by Mr. Lyell; which paper was afterwards signed by bishop

Moore and a number of the presbyters; but whether any alteration or addition was made to that instrument after it was brought in and before it was signed, or not, he cannot say; he does not recollect that there was any deliberation respecting the filling up of the blanks, but if a blank had been left for the sum to be allowed the plaintiff by the vestry of Trinity Church, as that sum had been previously settled by the meeting, it might have been written in without the deponent's observing it. The deponent says, that since the aforesaid meeting, in a conversation with the Rev. Elias Cooper, who was one of the presbyters that signed the aforesaid paper, the said Elias Cooper expressed a regret for the part he had taken at that meeting, on the ground of the proceedings having been hasty and more severe against the plaintiff than the nature of the case would justify;—and further the deponent saith not.

New-York, ss. WILLIAM HAMERSLEY, of the city of New-York, physician, a witness produced on the part of the plaintiff, being duly sworn, deposeth and saith, that shortly after the consecration of bishop Hobart, he called with his wife at the deponent's house, and, at the request of bishop Hobart, the deponent went with him into a room apart, when he opened the conversation by requesting the deponent to speak to Mr. F. Depeyster on the impropriety of light expressions, which in the judgment of bishop Hobart tended to degrade the episcopal office, observing at the same time, that if such expressions only touched his personal character, he should not notice them, but that he conceived himself identified with the episcopal church in virtue of his office, and that such expressions ought now to be abstained from; to which the deponent answered, that he was averse to becoming a party in the dispute, as he thought that the vestry of Trinity Church was the competent authority to settle all difficulties; the deponent says that the expressions which bishop Hobart complained of as having been used to him personally by Mr. Depeyster, were—you have mounted the saddle, you have attained the object of your ambition, you have attained the highest elevation in the church; why do you wish to crush

this poor man?—or expressions of similar import. The deponent informed Dr. Hobart that the plaintiff had called on him a few days before, and subsequent to his, bishop Hobart's, consecration, and observed to the deponent, that he presumed the deponent was acquainted with the unfortunate differences in the church, or which beset the church, and after some further conversation the plaintiff observed to the deponent, that he wished that matters could be so far settled, that he, the plaintiff might be assigned to St. John's Church, as that in which he had the most personal friends, conceiving that by such an arrangement the differences in the church would be healed; and the deponent said to the plaintiff, the same thing which he said to bishop Hobart, that he the deponent did not wish to take any personal interest or concern in the dispute, as he thought the vestry of Trinity Church was the properly constituted authority to decide. The deponent stated to the plaintiff, that he regretted that the plaintiff's pamphlet had ever appeared; to which the plaintiff replied that that was matter of opinion. The deponent also said to the plaintiff, that he had been present at the consecration of bishop Hobart, and the deponent was convinced, on account of the age and infirmities of the bishops, that there was a necessity to augment their number; to which the plaintiff said, that he also saw the same necessity, but that he thought, under all circumstances, that some other person might have been consecrated more to the advantage of the church; and the conversation terminated by a request of Mr. Jones, that the deponent would speak to some of the vestry, on the subject of assigning him, the plaintiff, to St. John's Church, and the deponent told the plaintiff that he would do so, and as he apprehends, he at the same time told the plaintiff that there his interference must cease; and the deponent agreed to speak to Garret Van Wagenen, David M. Clarkson, and Frederick Depeyster. The deponent says that the plaintiff had previously spoken to Mr. Van Wagenen, and as he believes to Mr. Depeyster on the same subject, but whether the deponent mentioned the latter part to bishop Hobart or not, he does not remember. After the deponent had repeated to bishop Hobart the previous conversation which he the depo-

nent had had with the plaintiff as aforesaid, as nearly as he can recollect, bishop Hobart observed to the deponent that he thought the deponent had departed from the neutral ground he had taken in delivering the aforesaid message; observing at the same time, that there could be no reason why every churchman should not take an interest in the controversy between the church and Mr. Jones, but emphatically said *audi alteram partem*; and observed further, that so valuable an establishment as that of St. John's Church ought not, as he conceived, to be given to a man who had disturbed the peace of the church; the conversation between bishop Hobart and the deponent ended by the deponent declaring that he would not take any further interest in the business, leaving the decision to the vestry of Trinity Church. The deponent says, that in this conversation bishop Hobart manifested no disposition for a reconciliation with the plaintiff, but intimated that it was his opinion, that the only way in which they could be settled was that the plaintiff should quit the diocese; but at the same time bishop Hobart manifested no personal hostility to the plaintiff. The deponent received a copy of Dr. Hobart's letter to the vestry of Trinity Church, which was covered in blank paper, and on the corner of the pamphlet was written "private;"—who sent it to him he does not know, but his impression was, that it had been sent by Swords's, understanding from report that they were the printers; after the deponent received the aforesaid pamphlet, he observed that Sargeant the bookseller had advertised the republication of it. The deponent, on being cross examined, says, that in all the conversations he ever had with bishop Hobart on the subject of the plaintiff, he always disclaimed any personal hostility towards him; and spoke of the plaintiff's conduct as an offence against the peace and order of the church, and of himself, Dr. Hobart, as personally, out of the question. The deponent says, that in the conversation which he had with Dr. Hobart on this subject, he understood him as saying, that the differences in relation to the plaintiff were now so great, that he thought that the clergy could no longer be associated with the plaintiff for the advancement of the interest of the church. Bishop Hobart also

said, that he thought the offence of the plaintiff was one of the highest nature which he could commit against the church. The deponent says, that he considered bishop Hobart, in expressing the opinion herein before mentioned of the plaintiff's quitting the diocese, as, grounding himself on the circumstances herein before last stated respecting the plaintiff. The deponent says, this was all the conversation he ever had with bishop Hobart on the subject, even after the publication of the plaintiff's "Solemn Appeal;" and further the deponent saith not.

New-York, ss. WILLIAM HARRIS, of the city of New-York, doctor of divinity, a witness produced on the part of the plaintiff, being duly sworn, deposeth and saith, that he has been settled as rector of St. Mark's church in the city of New-York for about eleven years last past, and has been a priest in the episcopal church since the year 1791, and president of Columbia College for the last two years;—he has always considered bishop Provoost as the diocesan of this diocese;—the deponent was a member of the general convention which met at Trenton in 1801, and remembers to have heard in the convention that bishop Provoost had written a letter to the house of bishops, informing them that he had resigned his office of bishop to the state convention of New-York, and that the house of clerical and lay deputies sent to inquire of the house of bishops, whether such a letter had been received from bishop Provoost, who thereupon made a communication to the house of clerical and lay deputies, which appears upon the journals. He thinks that the house of clerical and lay deputies acquiesced in the aforesaid communication, and was then of opinion that it belonged exclusively to the house of bishops to accept or not of bishop Provoost's resignation, and to prescribe the conditions upon which they would constitute another. The deponent says, that independent of the proceedings of the last state convention, he always was of opinion that the house of bishops had exclusively the power of deciding upon all questions relating to the consecration and resignation of bishops, but that from the arguments he then heard urged contrary to that opinion, his

mind on that subject is now in a state of suspense. The deponent says, that when he attended, as a member of the house of clerical and lay deputies, the consecration of bishop Moore, and signed his testimonials, he did it on the ground that bishop Moore was thereby made an assistant, or coadjutor bishop, and he verily believes that such was the understanding of the other members of that convention. The deponent was a member of the special state convention in May 1811, when Dr. Hobart was elected, and remembers to have heard Mr. Harison make a motion in that body, that the person then to be elected bishop should on the death of bishop Moore succeed him as diocesan of the state; upon which Dr. Moore observed, that that would be going farther than they had power to do; for that bishop Provoost was the diocesan, and appealed to Dr. Beach, who was then in the chair, whether or not he was correct in his opinion, who decided, that he was. Mr. Harison then changed the form of his motion, that the person to be elected should succeed to the place of bishop Moore, in case he should survive him. That Dr. Beach was president of the house of clerical and lay deputies in 1801, when bishop Moore was consecrated. The deponent was one of the presbyters who met bishop Moore in November 1811, and Mr. Harison and Mr. King appeared before them as representatives of Trinity Church. Mr. Harison, in a speech of considerable length, endeavoured to prove that bishop Provoost had resigned to the convention of the state, and that his resignation had been accepted; and before he left the room Mr. Harison observed that the vestry of Trinity Church would never acknowledge any other diocesan than bishop Moore during his life. The deponent always understood that the tenure of the office of a minister in the episcopal church, unless otherwise specially provided for in the call, was during life or good behaviour. The deponent always considered the real parties to the controversy subsisting in the church, to be bishop Hobart, Mr. How, and the plaintiff—that differences existed previous to the publication of the plaintiff's book, called a "Solemn Appeal," and that those differences were the cause of that publication, and from what the deponent knew of those differen-

ces, he is of opinion that the plaintiff had sufficient cause to make that publication. The deponent says, that he cannot say that any person ever asked him in direct terms to separate himself from the plaintiff, but the deponent recollects that shortly after the sitting of the convention in 1810, Dr. How, in conversation with the deponent observed, that really he, the deponent, was the cause of all the differences in the church, for that if the deponent would leave the plaintiff, he would be utterly abandoned, or words equally strong. The deponent says that he also recollects a conversation which he had with Dr. Hobart after the convention in 1810, and before the publication of the "Solemn Appeal," in which Dr. Hobart observed, that the deponent entertained erroneous opinions of him; that the deponent had decided in favour of the plaintiff as the injured man, whereas he, Dr. Hobart, was the deeply injured man; and that the deponent did very wrong in listening to the plaintiff. And in another conversation with Dr. Hobart, he observed to the deponent, that he, the deponent, was mistaken with respect to the plaintiff, that he had not so many friends as the deponent thought he had; that the plaintiff stood on very ticklish ground, and that if he did not take care, he, Dr. Hobart, and Mr. How, would say to the vestry, that either they must dismiss them or the plaintiff; from all which conversation the deponent concluded that Dr. Hobart and Dr. How wished to separate the deponent from the plaintiff. The deponent has no recollection of any other conversation with those gentlemen on this subject of any importance;—that previous to the publication of the "Solemn Appeal," the deponent had frequently urged upon Dr. Hobart the propriety of a settlement of differences between him and the plaintiff, and that he told Dr. Hobart it was a very painful thing for him, the deponent, having been in habits of intimacy with both; that it was not as it used to be; he was so averse to a reconciliation. The deponent says that there had been former differences between Dr. Hobart and the plaintiff, which Dr. Hobart appeared willing to have reconciled, and which were reconciled at the deponent's house. And the deponent says, that when urging him to a reconciliation with the plaintiff of their present differences, the depo-

nent told Dr. Hobart that he, the deponent, was persuaded that he was influenced by some other person, which Dr. Hobart altogether disavowed. The deponent asked Dr. Hobart whether it was with his consent that the plaintiff was left out of the standing committee; he said it was; and that Dr. How and Mr. Lyell were for doing it in 1809, but that he had prevented it; and not because he thought that the plaintiff ought not then to have been turned out, for he had no doubt of the justice, although he had of the policy of such measure. The deponent begged Dr. Hobart to consent that the bishop should call his clergy together, to talk over those matters; and that Dr. Hobart replied, that if the bishop should send for him he would not attend; for that there would be no peace as long as Mr. Jones was among them. The deponent says, that all these conversations of which he has spoken, were before the publication of the "Solemn Appeal," and as he believes shortly after the convention of 1810. The deponent says, that not long after the sitting of the convention in 1810, he was sent for by bishop Moore, and the deponent called on him in consequence;—that bishop Moore observed, that he was sorry a report had got in circulation that there were differences among the clergy; and that he wished very much that there might be a reconciliation. The deponent observed to bishop Moore that there would be no difficulty on the part of the plaintiff, for the deponent had frequently heard him say, that he was anxiously desirous of a reconciliation; but the deponent informed the bishop that he apprehended there would be difficulty on the other side: and then related to the bishop the conversation that had recently passed between Dr. Hobart and the deponent as herein before stated, and particularly that part of it, in which Dr. Hobart said, if the bishop should send for him he would not attend. Bishop Moore then requested the deponent to ask the plaintiff to call upon him, which he did. The deponent says, that he does not know of any steps taken by bishop Moore to heal the differences in the church:—that in all the conversations which the deponent has had with the plaintiff, he discovered a disposition for a reconciliation of existing differences. After the publication of the "Solemn Appeal," the deponent had a conversa-

tion with Dr. Hobart, about the middle of June 1811, as he thinks, in which the deponent stated to Dr. Hobart, that he had been handsomely supported at the election of bishops, that almost all the respectability of the diocese was on his side; that if he would extend the hand of reconciliation to the plaintiff, it would discover so much magnanimity, and such a christian disposition, that it would lay all opposition at his feet; that if he would do it, the plaintiff's pamphlet would be considered as an electioneering trick; and that the plaintiff, if he had the disposition, could never have it in his power to injure him. Bishop Hobart replied, that it was folly for him to pretend that he disregarded popularity, but that he was not so fond of it as the deponent imagined—that he knew it would be a very popular act; but that the deponent must remember there was a duty which he, bishop Hobart, owed to the church; and added, that the plaintiff's offence had been of such a nature, that there could be no confidence placed in him; that it would be necessary to speak freely of persons who might offer for ordination, which he remarked to the deponent, he knew they had always been in the habit of doing; that he should think it improper, or unsafe, to do so any more with the plaintiff. The deponent replied to bishop Hobart, that he differed with him in opinion, and that he the deponent said, that he thought that a discovery of the disposition to a reconciliation on the part of Dr. Hobart, would secure the gratitude of the plaintiff, and that he, bishop Hobart, would not have a more zealous and faithful clergyman in his diocese. Bishop Hobart replied, that he had been recently laid under the most solemn obligations to defend the interest of the church, and acting from a sense of duty, he could not consent to a reconciliation with the plaintiff. The deponent said, that he was very sorry, and that he the deponent would not presume to urge it, if the plaintiff had alone been in fault; but that every impartial man would consider that there had been faults on both sides; and that therefore not only the credit of religion, but a sense of justice, seemed to dictate a reconciliation, and on principles of mutual concession. Bishop Hobart replied, that it was unnecessary for the deponent to say any thing more on that

subject—I am decided, Mr. Jones must quit. The deponent says, that in the month of October 1811, during the sitting of the state convention, he had another conversation with bishop Hobart, in company with Dr. Moore, on the subject of the plaintiff, in which bishop Hobart was asked, whether any concessions on the part of the plaintiff would satisfy him; to which bishop Hobart replied, that the business was now in the hands of the vestry, and that of course he could do nothing as it respected the request; and on its being remarked by Dr. Moore, or the deponent, that if he the bishop would use his influence with the vestry, that it would be sufficient to stay proceedings against the plaintiff; to which bishop Hobart replied, that he had not so much interest with the vestry as they imagined. Bishop Hobart added, we can get along very well with you, gentlemen, although I think that you have done very wrong, and you think that I have done wrong, but we cannot with Mr. Jones. The deponent says, he received a letter dated 24th February 1812, from the Rev. Bethell Judd, a copy of which is hereunto annexed, which letter was received shortly after its date. The deponent says, that he communicated the contents of the aforesaid letter to Dr. Moore and Mr. Jones, and obtained their consent to return an answer to the following effect—thanking Mr. Judd and those for whom he acted, for the charitable offer of a mediation, and presuming that they were impartial men, and had the interest of religion and the church at heart, that he the deponent, Dr. Moore and Mr. Jones, would cheerfully submit all matters in difference to their decision. The deponent says, that not having it in his power to refer to a copy of his letter to Mr. Judd, he speaks of its contents from his memory. The deponent says, that to the aforesaid letter, which he wrote to Mr. Judd, he received an answer from Mr. Judd, dated 5th March 1812, a copy of which is hereunto annexed. The deponent says, that some time after the date of the last aforesaid letter, he happened to meet the late bishop Jarvis at New-Haven, who shewed to him a letter which he understood was a circular from Dr. Hobart to the clergy of Connecticut, a part of which letter the deponent heard read, and it blamed the clergy of Connecticut for their interference

in the case of Mr. Jones, and stated that the clergy of New-York had not interfered in the case of Mr. Amy Rogers, which happened in Connecticut, and therefore it was unreasonable that they, the Connecticut clergy, should interfere in the case of Mr. Jones. The deponent says, that he presumes, that this is one of the reasons why the clergy of Connecticut did not proceed with their mediation: but does not remember that he heard this assigned as a reason by any of the Connecticut clergy. The deponent says, that he understood from bishop Jarvis, that some of the clergy were offended at the letter—the part of the letter which the deponent heard read, contained nothing improper or disrespectful. The deponent did not hear bishop Jarvis express any opinion respecting the aforesaid letter. The deponent, on being asked how it came to pass that he the deponent was induced to give Dr. Hobart the certificates published in his letter to the vestry of Trinity Church, replied, that he thought it an act of justice to do so. The deponent says, that some time in June 1811, at the request of the plaintiff, he called on bishop Moore, to state to him the plaintiff's willingness to be reconciled, and that the rubric did not permit those who were unwilling to be reconciled to partake of the communion, but that the plaintiff was willing and desirous of a reconciliation. Bishop Moore then said, that many persons had called on him, who said that they would feel hurt at seeing Mr. Jones officiate at the communion, and he therefore thought it his duty to enjoin or request that Mr. Jones should not attend for that purpose. The deponent says, that about the time last aforesaid, bishop Moore exhibited to the deponent a list of the clergy, who at a meeting of the special convention in May preceding, had recommended that measures should be taken for the separation of the plaintiff from Trinity Church. The deponent recollects to have seen, the names of Mr. How, Mr. Bowen, and Mr. Nash, and as he believes, Mr. Phelps, to that paper; and there were in all about a dozen names, but he does not remember any others.

The deponent says, that some time in September 1811, and as he believes, about the 11th, he was sent for by bishop Moore, for the purpose of inducing him, the deponent, to

persuade the plaintiff to quit his connection with Trinity Church; and he said, that if the plaintiff would do so, he had no doubt but that the vestry would do something very handsome for him, and he would use his influence in order that they should, and said that it was impossible that the plaintiff could be any longer useful here; that he could go to Virginia, and might be useful in the church there; that he had no relations here, and there he would be among the relations of his wife. The deponent replied to bishop Moore, that he was authorized to say for the plaintiff, that he was ready to pay a respectful attention to any honorable terms that the vestry of Trinity Church had to propose to him, but that he would not consent to any conditions that would leave a stigma on his character. The bishop then asked deponent if he did not think it best for Mr. Jones to go, and the deponent answered, that if the terms offered by Trinity Church should meet Mr. Jones's acceptance, that then, the deponent thought, he would prefer going to remaining in Trinity Church under existing circumstances. Bishop Moore then took up a pamphlet which was marked, and said that Mr. Jones had charged Dr. Hobart with swindling, to which deponent replied, that he did not think Mr. Jones had any such intention; and that the deponent had understood that Mr. Jones had the statement which he had made from Mr. Swords. Bishop Moore made some other remarks on the pamphlet, which the deponent cannot recollect; but which he did not think very material at that time. Bishop Moore then asked deponent, whether he did not think that Trinity Church could exhibit a complaint against the plaintiff under the 32d canon, which he then showed the deponent, and the deponent gave it as his opinion, that they could not. The conversation then terminated upon bishop Moore's again urging the deponent to prevail on the plaintiff to quit; saying, that if he would, the vestry would do something handsome for him. The deponent says, that he was not summoned or invited to any other meeting of the bishop and his presbyters, excepting that of November 1811, but the deponent heard that there had been a previous meeting; he heard it from Mr. Jones, and afterwards from a witness who had been examined in this

cause, but he heard it from the plaintiff, some short time after the meeting of the 5th November. At the meeting of the 5th November, 1811, the plaintiff objected to the proceedings of that meeting, on account of some of the presbyters present being parties concerned; and on account of some presbyters not being summoned; and because some present had either prejudged the cause, or recommended his removal. The only ground of complaint exhibited against the plaintiff at the meeting of the 5th November 1811, was his publishing the "Solemn Appeal," and every other kind of charge disclaimed. The deponent says, that he considers presbyter and priest as synonymous in the episcopal church. The deponent says, that he recollects that Dr. Moore was interrupted two or three times while delivering his address at the meeting in November 1811. Bishop Moore once interrupted him, and said, he speaks against the bishop; and he thinks Mr. Bowen once interrupted him, but is not sure. Dr. Moore, after being three times interrupted, stopt, and Mr. How begged he would proceed, otherwise he would say that he was prevented; but Dr. Moore said, No, I have prepared this address with care to avoid saying what was not proper, and as I am so frequently interrupted I will not proceed. The deponent says, that from the manner in which Dr. Moore's address was received, he would not have proceeded, if he had been in Dr. Moore's situation. The deponent says, that several of the members of the meeting were speaking, either together, or so soon after each other, that it is impossible for him to remember what was said. The deponent says, that a paper, signed by a number of the clergy, and by the deponent, as one of them, implicating Mr. Feltus, which is published in Dr. Hobart's pamphlet, was published without his knowledge or consent; that paper was brought to the deponent for his signature by Mr. Berrian, before he was in orders; the deponent hesitated about signing it, and Mr. Berrian said, that the other clergy had signed it without making any difficulty, and added, that deponent was afraid; to which deponent replied, that we ought always to be afraid of doing wrong. The deponent however concluded to sign the paper, and did sign it; and as he thinks, wrote a note to Dr.

Hobart explaining the principle on which he did it. The deponent signed it, relying that Dr. Hobart could prove the facts therein stated, the deponent not having any knowledge of these facts; soon after, and as the deponent thinks, the very next day, he went to bishop Moore, and stated to him, that he, the deponent, thought on reflection that he had done wrong in signing that paper; that the facts stated in it might be true, but they were not so within the deponent's own knowledge; and he therefore requested that his name might be taken off. Bishop Moore observed, that Dr. Beach had just been with him and made a similar request, and that the deponent need give himself no concern, for that no use whatever would be made of the paper.

The deponent, on being cross examined, says, that previous to the fall of 1808, he was in habits of very strict intimacy with Dr. Hobart, and previous to that time he always spoke of the plaintiff as a faithful zealous clergyman; and that his foibles ought not to be mentioned in comparison with his many excellent qualities; and the deponent does not recollect that Dr. Hobart, previous to that time, ever did any thing to excite unfavourable impressions in the mind of the deponent against the plaintiff. Previous to 1808, he thinks that Dr. Hobart took pains to prevent the feelings of the plaintiff from being hurt, by the manner of conducting the affairs of the church. The deponent has had frequent conversations with Dr. Hobart, but when particularly he does not know, in which Dr. Hobart said, that he had often yielded to Mr. Jones precedence, which he was not entitled to, for the sake of preserving peace; he has heard Dr. Hobart say, that he thought it a matter of little consequence, and has heard Mr. Jones say the same thing. Dr. Hobart was called to Trinity Church before Mr. Jones. The deponent has heard bishop Moore and Dr. Bowden say, that they thought that Dr. Hobart had gone too far in yielding to Mr. Jones what he was not entitled to; and he heard bishop Moore say, in the fall of 1808, that he was afraid Mr. Jones was influenced by improper motives, that he was envious of Dr. Hobart, and wished to prevent his rising in the church, but that it would be in vain. The deponent says, that he has here-

tofore said, and subsequent to the reconciliation that took place between Dr. Hobart and Mr. Jones at his house in 1808, that in his opinion Dr. Hobart had acted a christian part, and shewed great forbearance towards Mr. Jones; and he has also said, that he had the same opinion of the conduct of Mr. Jones on that occasion. The deponent has expressed to bishop Hobart his commendation of the forbearance which he exercised towards Mr. Jones. Previous to the fall of 1808, he thinks that he has heard Mr. Jones say, that he thought Dr. Hobart was rather too assuming; but the deponent did not think at that time that Mr. Jones wished to injure Dr. Hobart in the opinion of the deponent. In a conversation between the deponent and Dr. R. C. Moore and Mr. Jones, previous to the convention of 1808, Dr. Moore said, that Mr. Lyell had said, that he did not see any reason why Dr. Hobart should be secretary forever, but that there was no plan formed to turn out Dr. Hobart; and that just before the meeting of that convention, Dr. Hobart told deponent that he understood there was such a plan, and that if there was, and he was informed of it, he would resign; to which deponent replied, that he knew nothing of any such plan, but that he would make enquiry, and that he did in consequence speak to the plaintiff on the subject; who said, that he would vote as he thought proper, but that he had not, and would not speak to any other to influence their vote. The deponent did not understand from what passed in the aforesaid conversation with Dr. Moore, that Mr. Lyell was concerned in any plan to turn Dr. Hobart out of the office of secretary of the convention. The deponent immediately communicated to Dr. Hobart the substance of what passed between deponent and plaintiff, and Dr. Hobart appeared to be satisfied that there was no such plan as he had supposed. The deponent understood from the plaintiff that he had voted against Dr. Hobart on that occasion, and he thinks there was one other member that did, but is not certain. The deponent says, that he was at the convention which met at Poughkeepsie in 1805, and arrived shortly before it adjourned; he left this in a sloop with the plaintiff and several other members of the convention, who all except the deponent and a Mr. Gibbon left the sloop at

West-Point, and as the deponent understood, proceeded by land to Poughkeepsie, where they arrived before the opening of the convention. The deponent says, that during the time the plaintiff was on board the sloop with the deponent he did not hear the plaintiff urge on any of the members of the convention to leave Dr. Hobart out of the office of secretary; nor does he remember any conversation respecting Dr. Hobart. The deponent has often heard Dr. Hobart express his regret at discovering the opposition of the plaintiff towards him. Shortly before the reconciliation between Dr. Hobart and the plaintiff at the deponent's house, he, at Dr. Hobart's request, informed the plaintiff that Dr. Hobart wished for a reconciliation; the plaintiff said, he would not consent to a reconciliation until he had laid a written statement which he had drawn up before the bishop, unless he could have assurance that he would not be insulted, or ill treated again by Dr. Hobart; and does not recollect what the insults or ill treatment were, of which the plaintiff complained; he has no recollection of any subjects of complaint on the part of the plaintiff previous to that time, except that which related to what took place at the funeral of Mr. Walton, or what related to Gen. Hamilton's funeral, and the ordination of Mr. Gillet. The plaintiff read the statement before mentioned to deponent shortly before the conversation last referred to by him, and it contained the complaints last mentioned. The deponent communicated to Dr. Hobart what had passed between him and the plaintiff as last stated, and Dr. Hobart observed that it never would do for the plaintiff and him to talk over what had passed, but that every thing should be buried in oblivion; that he hoped that the plaintiff would not lay his statement before the bishop, as it would be giving more importance to the matter than belonged to it, lead to recrimination, would be giving it a publicity, and thereby be injurious to the church. Dr. Hobart added, that if he was desirous of injuring the plaintiff, he should wish the matter laid before the bishop, as he had something to shew in black and white, that the plaintiff was not friendly to him; that the plaintiff had written something to his disadvantage; Dr. Hobart at the same time informed the deponent, that he wished him

to tell the plaintiff, that if he had any wish to lay the matter before the bishop, he must not be prevented from doing so, by any attempt at reconciliation made by him. He does not recollect whether he communicated this to the plaintiff or not, as he was very desirous of a reconciliation, but he well remembers, that he approved of Dr. Hobart's plan of a reconciliation, in preference to the plaintiff's laying his statement before the bishop; and that he expressed this opinion to both parties. Dr. Hobart has in conversation at different times with the deponent, one not long after the convention of 1810, and the other he thinks previous to that time, told the deponent, that it was his wish to retire from the city on account of the differences which he knew would arise with the plaintiff; and on one occasion said that he was taking measures for that purpose, and that it would soon appear that he was not the ambitious man that he was thought to be. The deponent says, that both the letters from Mr. Judd, herein before referred to, were written and received after the plaintiff had been separated from Trinity Church by bishop Moore and his presbyters, and suspended by them from the exercise of his ministerial functions. He says, that it is usual for the clergy to meet at the bishop's in convocation the day preceding the sitting of convention. He has heard Dr. Beach express an opinion, or wish, that the clergy should not exchange with Dr. R. C. Moore, on account of his irregularity, and the deponent observed, that if Dr. Moore was found to be living in breach of a canon he ought to be called to an account for it. The deponent says, that he did entertain and express an opinion, that Dr. Moore was living in the breach of the canon of the church, which requires the use of the book of common prayer before all sermons and lectures; and the deponent declined exchanging with Dr. Moore on account of the irregularity aforesaid; he does not remember, that Dr. Moore asked him to exchange, but he has no doubt Dr. Moore knew that was his determination. The deponent says, that he informed the plaintiff, that if he exchanged with Dr. Moore, the deponent should be obliged to break off intercourse with him:—that when Dr. Moore was interrupted in his delivering his address to bishop Moore and his presbyters

it was observed, that that meeting was to decide on the question of the separation of the plaintiff from Trinity Church, and that the discussion of the matters stated in the "Solemn Appeal" was irrelevant and out of order, and that was the reason given for interrupting him. The deponent, on being again examined on the part of the plaintiff, says, that Mr. Jones very frequently in conversation with the deponent expressed his regret at the differences that subsisted between Dr. Hobart and him, and his wish that they were reconciled, and that during the first part of their connection in Trinity Church he had lived with him as a brother, and that he could not have loved a brother better. The deponent says, that the facts stated in the "Solemn Appeal," so far as they relate to the deponent, are truly stated; the deponent says, that the reconciliation herein before stated by him to have taken place between the plaintiff and Dr. Hobart, took place at the time, and comprehended the subjects, and was of the nature mentioned in the certificate given by the deponent and published in the "Solemn Appeal." The deponent says, that he informed the plaintiff that if he became reconciled with Dr. Hobart, he would not have any future ground of complaint against him, but whether this was said from the deponent's inference from what was said by Dr. Hobart, or Dr. Hobart expressly authorizing it to be said, he cannot remember; in the conversations preceding the reconciliation, Dr. Hobart remarked, that the plaintiff had the advantage of him, being more cool and dispassionate; after the reconciliation, the deponent remarked to the plaintiff, that he thought that he had acted a christian part.

The deponent, on being again cross examined, says, that in all the conversations he ever had with Dr. Hobart on the subject of the differences with the plaintiff, he always represented himself as the injured party, and declared that he never had willingly injured the plaintiff; that he never heard Dr. Hobart admit, that the plaintiff had just cause of complaint against him; but always expressed himself desirous of a reconciliation, previous to the reconciliation which took place at the deponent's house, as the consequences of continuing the dispute would be unpleasant.

The deponent being again examined on the part of the plaintiff, says, that he does not know of any instance, in which the plaintiff has violated the stipulations of the reconciliation with Dr. Hobart made in 1809; but he thinks that the objection of Dr. Hobart to the plaintiff's exchanging with Dr. R. C. Moore, after bishop Moore had sanctioned such exchange, and the part Dr. Hobart took in turning the plaintiff out of the standing committee of the state convention, was in violation of the spirit of that reconciliation; the deponent has no recollection of any notice having been sent to him to meet a convocation immediately preceding the convention in October 1811, he did not attend such convocation; and he thinks if he had received such notice that he would have attended; the notice to attend the convocation which is usually held the evening before the convention, is generally noted in writing at the bottom of the notice of the meeting of the convention; the deponent attended the convention in October 1811, when deponent, in conversation with Dr. Beach, Dr. Hobart and others, proposed to call Dr. Moore before the authority of the church, if he was in the habit of breaking one of the canons; Dr. Hobart observed that he should oppose that, as it would be doing what Dr. Moore wanted, and give him an opportunity of raising the cry of persecution. The deponent was induced to make the aforesaid proposition, because he did not think that it was correct for individual clergymen to accuse Dr. Moore of breaking a canon, and to seek to enforce it by refusing intercourse with him; the deponent, however, afterwards yielded to this course, and understood that the plaintiff did, in order to avoid being accused of upholding Dr. Moore in irregularities.

The deponent, on being again cross examined, says, that he does not think that he would have attended the convention in October 1811, without he had received either a written, or a verbal notice to attend. It is the uniform practice for the clergy to meet in convocation at the bishop's the evening preceding the meeting of the convention, and has been so ever since he has been in the city of New-York; and knowing that there was to be a convention in October 1811, he must necessarily have supposed that there was a previous

convocation. The deponent says, that when he informed the plaintiff as before stated, that unless he, the plaintiff, desisted from exchanging with Dr. Moore, the deponent would not exchange with him, he did so because he thought the plaintiff was doing wrong in making such exchange; when Dr. Beach proposed that none of the clergy should have any intercourse with Dr. Moore as herein before stated, Dr. Hobart objected and said, that he thought every clergyman should be allowed to act as he saw fit. The deponent, on being again examined on the part of the plaintiff, says, that he would not have attended the meeting of the convocation preceding the convention in 1811, unless notified, under the peculiar circumstances that then existed, and further he saith not.

*Copy of a letter from the Rev. B. Judd to the Rev. Wm. Harris,
D. D. President of Columbia College, New-York.*

Norwalk, February 24th, 1812.

Rev. and dear sir,

I take the liberty to inform you, that at a convocation held at New-Haven, on Wednesday last, the clergy of this state, deeply feeling the unhappy situation of the church in New-York, appointed several of their brethren to visit that diocese, and in the spirit of meekness to exhort them to lay down their weapons, and to seek for peace. We all sympathise with them in their affliction, and believing, that when one member suffers, all the members must suffer with it—think it our duty to beseech them for the honor and safety of the church, to be reconciled to each other. We do not presume to dictate to our brethren, but rather in love to entreat them to terminate the unhappy controversy in which they have been engaged. With this disposition, several of the clergy of this state will take the liberty to wait on their brethren in New-York, on Thursday the 12th day of March next, on this painful but important duty.

Your's affectionately,

(Signed)

B. JUDD.

*Copy of a letter from the Rev. B. Judd to the Rev. Wm. Harris,
D. D. President of Columbia College, New-York.*

Norwalk, March 5th, 1812.

Rev. and dear sir,

Your's of the 29th of last month has been received with that pleasure which I had every reason to anticipate, and I have the honor to inform you, sir, that on account of some information which the committee appointed to visit New-York have received, that overtures for reconciliation with Trinity Church are about to be made by Mr. Jones, their proposed visit is postponed for the present.

Your affectionate

Brother in Christ,

(Signed) . . . B. JUDD.

New-York. ss. The Rev. HENRY I. FELTUS, a witness on the part of the plaintiff, being examined by consent of the parties in this cause, deposeth, that he has always considered bishop Provoost as the diocesan bishop of this state, and founded that opinion on the circumstances that took place at the time of bishop Moore's consecration, and the resolution of the house of bishops as stated in their minutes. Witness was not a member of the convention, but was in orders and heard of their proceedings at the time. Conceives the house of bishops to be the supreme authority for determining questions of this nature. Was a member of the special convention in May 1811, and supposed the question, as to who was the diocesan, was there conceded and acted upon, when Dr. Hobart was elected. Mr. Harison then drew up a resolution that the person to be chosen bishop should succeed as diocesan on the event of bishop Moore's death. Witness mentioned to Dr. R. C. Moore, who sat next him, that it could not be, as bishop Provoost was the diocesan, and that this fact was upon the minutes of the general convention, in which bishop Moore was consecrated. Upon which Dr. Moore made the suggestion publicly, and appealed to the chair. Dr. Beach was in the chair, and agreed that such was the fact. Upon which Mr. Harison modified his resolution to the form in which it now stands, to get clear of the objection. The

point was not otherwise conceded or acted upon by the convention. Considers the subsisting controversy in Trinity Church, to be between Dr. Hobart and Mr. Jones alone—it existed before Mr. How came into Trinity Church, and he arrayed himself on the side of Dr. Hobart. The witness never saw that part of the “Solemn Appeal,” written by Mr. Jones, nor heard it read, till it was in print; but from what he has since learned from Dr. Harris and others, he thinks Mr. Jones had no alternative but to publish it. The account contained in the “Solemn Appeal,” as far as concerns the witness, is in substance and circumstances correct. Depo-
 nent was not present at, and had no knowledge of any meeting of presbyters convened on the subject of Mr. Jones’s case, before that of the 5th of November 1811. Witness had a notice to attend a meeting of the convention in October 1811; but no notice subjoined to it, as is usually done, to attend a convocation the evening before at the bishop’s, and did not suppose that there was a convocation or meeting of the presbyters at the bishop’s that evening, because he received no notice. At the meeting of the presbyters on the 5th of Nov. 1811, Mr. King expressly said, there was no charge against Mr. Jones’s moral character or non-performance of duty, but said a separation was wished for on account of differences existing in the church, which there was no hope of bringing to an amicable conclusion. Remembers the plaintiff at that meeting entered a verbal protest against the validity of the proceedings, because some of the presbyters were not summoned to that meeting; and looking round, he observed that some present were parties to the controversy. Witness recollects that Dr. R. C. Moore was interrupted three or four times in delivering an address at that meeting, on the ground of irrelevancy. Mr. Lyell, in one interruption, said, this was not the point to come before them; that had been fixed—then turning to Dr. Moore, he said, but you were not there. The witness from that, and seeing the papers ready drawn up, concluded that there had been a previous meeting, of which he had not heard. Mr. How was at least as active as any other person there. Did not think the state of bishop Moore’s health at that meeting was such as rendered him

competent to the conducting of such a business; he appeared a sick man, and affected both in his body and mind; twice he appeared very much agitated. Mr. Phelps intreated him to withdraw, and tried to lead him from the room, as he presumes, until the bishop should recover himself. Witness supposes the meeting lasted three or four hours. The witness knows of no other instance in which bishop Moore discharged the duties of the episcopal office, since his being attacked with his indisposition previous to the special convention in May 1811.

Being cross examined, witness says, he thinks a bishop should resign his connection with his diocese to the house of bishops, and to no other body. Bishop Moore has exercised all the efficient power of bishop in the diocese, since his election, but witness supposed it was by sufferance from bishop Provoost. Witness does not know, but has heard, there were prejudices excited in the congregation of Trinity Church and its chapels, by the publication of the "Solemn Appeal," which induced some persons to withdraw from church when Mr. Jones preached, and some when Dr. Hobart and Mr. How preached.

We consent that this deposition shall be used before the arbitrators as if regularly taken, but saving all just exceptions as to its contents.

(Signed) THOS. ADDIS EMMET, for plt.
(Signed) T. L. OGDEN, for T. Church.

New-York, ss. RICHARD CHANNING MOORE, of the city of New-York, doctor of divinity, a witness produced on the part of the plaintiff, being duly sworn, deposeth and saith, that he has been an episcopal clergyman within the diocese of New-York for twenty-six years last past, and he has always considered bishop Provoost as the diocesan since his consecration, but did not suppose that he would have acted after the consecration of bishop Moore as a coadjutor bishop; but the deponent always thought that bishop Provoost had the right of acting under the minutes of the house of bishops, but he does not know the precise time when he became acquainted with those minutes. In the interval between the consecration of bishop Moore, and the time the deponent first saw the aforesaid minutes, he thinks, but is not quite

certain, that he considered bishop Moore as the diocesan. The deponent always considered the acts of bishop Moore as valid, unless controlled by bishop Provoost. According to the constitution of the episcopal church in this country, the house of bishops is, in the opinion of the deponent, the paramount authority in admitting bishops to their office, and he thinks the power rests entirely with them to accept or refuse the resignation of bishops. The deponent has always, since he first saw the minutes of the house of bishops appointing bishop Moore, considered him only as coadjutor bishop, and he has frequently expressed this opinion to other episcopal clergymen, and has never heard it controverted;—but the deponent never thought that bishop Provoost would have acted after the appointment of bishop Moore, though he considered him as having the right to do so if he thought fit. The deponent says, that a few days before the meeting of the presbyters respecting the business of the plaintiff, he had a conversation with the Rev. Mr. Bowen on the subject at the deponent's house, and the deponent informed him that bishop Provoost would act in that matter as bishop, which Mr. Bowen seemed to doubt; and upon the deponent asking the said Mr. Bowen if Dr. Moore was not a coadjutor bishop, he said undoubtedly he was, or some equivalent expression. The deponent says, that he was a member of a special convention of the episcopal church of this state, which met in May 1811, and recollects a motion made by Mr. Richard Harison, that the convention should proceed to the election of an assistant bishop, and also another resolution, moved by the same gentleman, that the person then to be elected, in case he should survive bishop Moore, should be the diocesan—upon which the deponent objected, that it could not be, as bishop Provoost was the diocesan, and appealed to Dr. Beach, the president of the convention, to be corrected, if he, the deponent, was in error; and Dr. Beach replied that the deponent was correct;—that then Mr. Harison modified the resolution and made it to state that the person to be elected should, after the death of bishop Moore, succeed to his place; which modification was made, as the deponent believes, to obviate the objection, and not intended to commit those who might

differ with this deponent on the subject of the diocesan. The deponent was at the meeting of bishop Moore and the presbyters on the 5th November 1811, and he remembers that in an address of Mr. Richard Harison, he said that he did not believe that Trinity Church would ever acknowledge any other diocesan than bishop Moore, as long as he lived; that Mr. Harison and Mr. King appeared as a committee on the part of Trinity Church, before bishop Moore and the presbyters, to produce charges against the plaintiff; that Mr. Harison having occasion to go out for some papers, the deponent enquired of bishop Moore, whether the lay gentlemen came there to plead against the plaintiff, or only to produce their complaint; upon which Mr. King came up to the deponent, and said, that their intention was only to produce their complaint, and then to retire. Mr. Harison, however, having returned, made a long address, as the deponent thinks, for an hour, or an hour and an half, in order to show, that by the church government, the convention of this state were the only judges who was the diocesan. Mr. Harison stated that Trinity Church made no charge against the plaintiff for immoral conduct or neglect of duty; and he was very tender of the plaintiff's reputation;—the only ground of complaint was the plaintiff's book entitled, "A Solemn Appeal," which he said had produced confusion in the church. The deponent says, that he had a conversation with bishop Hobart shortly after his consecration, in which conversation the deponent introduced the subject of the plaintiff, and pleaded with him for an amicable adjustment of all differences; that bishop Hobart adverted to the confusion that had existed among the clergy, and said that he could get along with all but the plaintiff, and mentioned particularly that he could get along with Mr. Fel-tus and the deponent—and said, "how can I get along," or "how can I have any confidence with or in a man who takes "notes of private conversations,"—and a good deal passed to the same purpose. The deponent says, that in October 1811, during the sitting of the convention, he had another conversation with bishop Hobart, in company with Dr. Harris, in Trinity Church; and Dr. Harris and the deponent suggested to bishop Hobart the good effects that would arise to the

church by a settlement of all differences with the plaintiff; upon which bishop Hobart said, that he had now nothing to do with it—the vestry had taken it up; and the deponent and Dr. Harris thereupon remarked to bishop Hobart, that in their opinion his influence with the vestry was such, that if he would interfere, the matter would be adjusted; but he does not know whether bishop Hobart repeated the remark, “the business was now with the vestry, and that he had nothing to do with it.” The deponent says, that on the day of the election of Dr. Hobart, and immediately after, he, the deponent, went up towards bishop Hobart, who at first appeared to the deponent determined not to speak, and to be turning away from him; but immediately turned towards the deponent, and said, “I will not turn away from you,” and thereupon bishop Hobart and the deponent gave each other the hand, standing without the railings of the altar; the deponent then observed, that as the business was settled, he hoped that they would all (meaning to include the plaintiff) live in peace and love; and suggested the propriety of bishop Hobart’s not answering or taking any farther notice of the plaintiff’s book—and that thereupon bishop Hobart remarked, that he had many friends in different parts of the United States, into whose hands Mr. Jones’s pamphlet must have come, and that he owed it to his own character to give them some explanation; otherwise they would suppose the charges in the book to be true; but he said he should do nothing to hurt Jones;—the deponent said he was rejoiced to hear it;—the deponent understood that bishop Hobart would write a statement and send to his friends. Bishop Hobart observed, that he would not be influenced by any thing that had passed, and added, “we shall get along very well together.” The deponent says, that he was sent for by bishop Moore in the month of Sept. before the meeting of the bishop and presbyters; and the deponent went to Greenwich to see him in consequence; and on going into his room, after the customary salutations, bishop Moore took up the plaintiff’s book, in which he had several places marked down, and he observed, that the plaintiff had made several charges against Dr. Hobart, one of which, he said, looks something like charging him with swindling. The

deponent asked which that was, and bishop Moore replied, that which charged him with appropriating monies intended for the publication of religious tracts to other purposes. The deponent said, that he did not think any person could have such an idea either of the publication or of Dr. Hobart's conduct; that it only implied, that he had taken the liberty of appropriating the money in a way different from what was intended, but by no means implying dishonesty. Bishop Moore then said, that he wished the deponent to advise the plaintiff to resign his office of assistant minister, and quit the city, and all things would be made agreeable to him the deponent. The deponent asked bishop Moore where he would wish the plaintiff to go, and he said let him go to Virginia, he can be useful to the church there. Deponent then said—"what, sir, quit his native city and go to Virginia—what would he do there, sir?" Bishop Moore replied, that the plaintiff had no connexions here, and that his wife's friends were in Virginia. The deponent asked how the plaintiff would dare to look Mrs. Jones's relations in the face, banished from his native city; to which bishop Moore replied, that the plaintiff could say, that disturbances had arisen in the church in New-York, and that he had quit it in order to get rid of them. Deponent then told bishop Moore that he would advise the plaintiff to stand his ground, and that if bishop Moore's brother was in the same situation, the deponent would give him the same counsel. The bishop then remarked, that the deponent was very selfish. Deponent said, that the plaintiff had always treated him well since he came to the city, and that it was his, the deponent's, duty to be his friend;—the conversation then became desultory until the deponent got up to go, when the bishop remarked, that deponent had better let Mr. Jones go, and added, "we shall have no rest here while that nest-egg remains." In the course of the conversation bishop Moore remarked, that he was not authorized to say the vestry would, but that considering their liberality, he had no doubt but that they would do something handsome or generous for the plaintiff if he would go. This observation was repeated several times; and he also said, that the clergy had lately discovered traits of generosity in the character of the

deponent, which had produced an alteration in their opinion concerning him, and that things would be made agreeable to the deponent. The deponent says, that the view which he had of the preceding conversation was, that if he had persuaded the plaintiff to go away, that it would be of advantage to him the deponent. The deponent says, that in consequence of the preceding interview with bishop Moore, he wrote him a letter dated 13th September 1811, and received an answer from bishop Moore dated 14th September, to which the deponent replied, as he believes, the same day;—that copies of these communications he now produces, and hands over as part of his testimony in this case. The deponent says, that he is well convinced that he did not fall into the mistake supposed by bishop Moore in his letter, but that the bishop did use the expressions mentioned by this deponent in his examination. The deponent says, that prior to the conversation with bishop Moore before mentioned, he had suffered severely by a paralytic stroke, which had more or less impaired the powers of his mind; and the deponent thought, and has so expressed himself, that his brethren had imposed a duty on bishop Moore, on the 5th November 1811, which the debilitated state of his mind and body would not justify, and this was so obvious at the meeting of the presbyters, that some one of the members advised him to withdraw. The deponent says, that he was not present at any meeting of the bishop and presbyters, previous to the 5th November, but he thinks he did hear that there had been such a meeting. The deponent had no notice to attend any prior meeting;—he thinks he heard accidentally of such meeting. At the meeting of the bishop and presbyters on the 5th November, the deponent attempted to deliver an address which he had previously prepared, in order to avoid every thing irrelevant to the subject, or indecorous in form of expression.

The deponent having been repeatedly interrupted while reading his address, on the ground of its irrelevancy to the subject, was finally obliged to stop, on account of the repeated interruptions. The deponent now produces a copy of that address to be taken as part of his testimony. He was inter-

rupted while reading the address, by bishop Moore, who said, "that he speaks against the bishop." The deponent was interrupted by Mr. Lyell, who said, that is not relevant, Dr. Moore;—that has been decided; oh no, you were not present." The deponent does not recollect what Mr. Lyell meant "had been decided." The deponent says, that the plaintiff made a verbal protest against the proceeding of the bishop and presbyters, because they had not been convened by the proper authority, and because all the presbyters in the diocese had not been notified, and some of the presbyters present were parties in the case, and that some of them had given certificates against him. The deponent says, that the Rev. Mr. How was as active a member as any other of the presbyters, and particularly in interrupting the deponent. The deponent says, that the general usage in the settlement of clergymen in the episcopal church in this state is a permanent settlement, unless specially called for a limited time; and he has known some such instances. The deponent was brought up in Trinity Church, in the city of New-York, and never knew other than permanent settlements in that church before the call of Mr. Chapman, which was five or six years ago, and who was called for a limited time, as the deponent understood. The deponent says, that he has always considered the real parties to the existing controversy in Trinity Church to be bishop Hobart, Mr. How, and the plaintiff, and that if the vestry had left it alone, it would have been settled long ago; the deponent does not think this difference took its rise from the publication of the plaintiff's book, but that the book took its rise from the differences; he does not know that the members of the congregation of Trinity Church generally knew any thing of any differences, before the publication of the plaintiff's book; the deponent knew from the plaintiff, and from the operation of the differences between him and the persons before named, that such differences did exist, anterior to the publication of the plaintiff's book. The deponent says that he, as one of the eldest presbyters, called several times on bishop Moore and requested him to interfere with his authority to settle the aforesaid differences, for that if he did not, it would produce anarchy and confusion in the church; the deponent says, that

he recollects, that one of the subjects upon which he conversed with bishop Moore, was an objection on the part of bishop Hobart and Mr. How to the plaintiff's exchanging pulpits with the deponent, as he understood from the plaintiff; that the deponent asked bishop Moore, whether he had any objection to such exchange, to which he replied "none in nature," and the deponent then observed to bishop Moore, if he as rector had no objection, he could not see the propriety of his assistant ministers interfering to prevent it, and that if he the deponent had an assistant minister with him in his church he would let him know, that he the deponent was rector; the deponent also recommended to bishop Moore, that he should convene all his presbyters who were involved in controversy, and insist upon their settling their differences; and that if he did not, it would be brought before the civil authority to settle at last; the deponent says that he thought there was cause enough before the publication of the plaintiff's book to publish it, but the deponent never advised it; the deponent says that the plaintiff complained to him that his influence in the congregation of Trinity Church was lessened in consequence of the acts of Dr. Hobart and Mr. How, and that the deponent replied, that as far as his own observations extended, that was not the case; the deponent then advised the plaintiff to be very cautious how he published, for if Dr. Hobart's influence should prove to be greater than his, it might prove his ruin; the deponent says, that he does believe that Dr. Hobart and Mr. How did object to the plaintiff exchanging pulpits with the deponent, that this belief was founded on the deportment of these gentlemen toward the deponent, and from the admission of bishop Moore, when deponent expostulated with him as aforesaid; the deponent says that after the publication of the plaintiff's book, the deponent wrote a letter to Dr. Hobart in answer to one which he received from him, copies of which letters he now produces and delivers as part of his testimony; the deponent says that he never has discovered any indisposition on the part of the plaintiff; to come to a settlement of all subsisting differences upon proper principles; but on the contrary, it has always been his wish; the deponent does not think that bishop Hobart has manifested the same disposition,

with respect to the plaintiff; the deponent says, that on the evening before the election of bishop Hobart, a meeting of the clergy involved in controversy was proposed to be holden at Dr. Beach's house, with a view to a general settlement of all differences, and that an union of sentiment might prevail in the choice of a bishop; several clergymen did attend, but neither Dr. Hobart nor Mr. How or any person to represent them, and of course nothing was done. Deponent on being cross examined says, that he saw the plaintiff's book in manuscript before it was published, he thinks he may have seen some parts of it, three or four months previous to the publication. That from the time of his first acquaintance with Dr. Hobart, which was about the year 1800, or 1801, until the summer of 1808, he was in terms of the strictest intimacy with him, and never during that time heard him say any thing against the plaintiff, or speak of him in an unfriendly way; he does not remember whether or not the plaintiff was the subject of conversation but he thinks it probable he was; soon after the sitting of the general convention in 1808, the plaintiff stated to deponent that he thought Dr. Hobart discovered undue ambition in his views, but this was not the cause of the intimacy between Dr. Hobart and the deponent being broken off; there was a conversation between the plaintiff and deponent prior to the meeting of the state convention in 1808, respecting the turning Dr. Hobart out of the office of secretary of that body, but who first suggested it, he does not know; thinks it as probable that he was the first, as that the plaintiff was: it was however not attempted to be done; the deponent voted for Dr. Hobart according to the best of his remembrance; the deponent says that he understood from bishop Provoost during the present controversy, that he had discovered since the commencement of it that he was still the diocesan; and that he had first discovered it on reading Mr. Ireland's pamphlet; bishop Provoost also mentioned to the deponent that he discovered from minutes of the general convention, that he was still the diocesan; and that bishop Moore had only been consecrated as his coadjutor, and considering the unpleasant state of the church, and the oppressed situation of the plaintiff, he determined to act; the deponent says

any three bishops have a right to consecrate a bishop without a vote or order of the house of bishops according to the provisions of the canon; that at the meeting of bishop Moore and the presbyters in November 1811, Mr. King spoke for a short time; the deponent thinks that bishop Moore during the sitting of that convocation, comprehended perfectly the nature of the subject before them; in the conversation which is before stated to have taken place between bishop Moore and the deponent, in which he advised that the plaintiff should quit the diocese, he is of opinion that bishop Moore was influenced by a wish to restore harmony in the church; the deponent thinks the publication of the plaintiff's book excited much uneasiness, among the acquaintance of the deponent in Trinity Church, some of whom espoused the cause of Dr. Hobart, and some that of the plaintiff; the deponent has understood, and as he believes from Dr. Harris, that Dr. Beach had proposed, that none of the clergy should exchange pulpits with the deponent; Dr. Harris and the plaintiff have both said to the deponent, that they would not exchange pulpits with him, unless he gave up what they called irregularities in the discharge of his clerical duties; the deponent understood, that when it was proposed in conversation among the clergy that they should not exchange pulpits with the deponent, that Dr. Harris observed, that if the deponent was irregular, the true way would be to bring the deponent before the proper authority; to which Dr. Hobart objected, saying the deponent would then raise the cry of persecution. The deponent on being again examined by the plaintiff, says, that the irregularities before alluded to in this deposition, referred, the deponent understood, to the habit which he was then in, of meeting the religious part of his congregation, in private societies; and being engaged with them in extempore prayer; the deponent knows of no other irregularity with which he was charged; he has discontinued extempore prayer, in consequence of finding it disagreeable to his brethren, and the remonstrance of Dr. Harris and Mr. Jones on the subject, who stated, if the deponent did not, in order to preserve harmony with the rest of the clergy they would be obliged to discontinue exchanging pulpits with him, and that if he did,

all difficulties would be removed; but the deponent says, that although he did comply, the difficulties were not removed, except as it regarded Dr. Harris and the plaintiff. Deponent on being again cross examined says, the plaintiff when remonstrating with the deponent against extempore prayer, said he thought it would be construed into a violation of the canon of the church; he does not know that Dr. Hobart and Mr. How were informed that he had discontinued extempore prayer in the private meetings with the members of his congregation, but that Dr. Harris and the plaintiff informed the deponent, they had informed bishop Moore of this circumstance; the deponent says that he did receive a notice to attend the convention in October 1811, but that no notice to attend a previous convocation as is usual was annexed thereto; which the deponent inferred, was in consequence of bishop Moore's being out of town, and further he saith not.

Copy of a letter from Dr. Richard Channing Moore to bishop Hobart, 1811.

Right Reverend Sir,

In your letter to me of the 5th inst. you have been pleased to observe, that you have never doubted my disposition to do justice to all persons, and then proceed to propose several questions, to which you request an early answer. To the questions thus offered to my consideration, I should not have hesitated to reply without reserve, although you had omitted the assurance that you have no intention to implicate me in my answers, and pledge yourself that my reply shall not be employed to my disadvantage.

In order that you may perfectly understand me, I will answer the points suggested in your letter in their proper order; and shall then take the liberty, in an affectionate and brotherly manner, to express to you my views, with respect to the amicable and final adjustment of all existing differences between yourself and others. In the discharge of what I conceive to be my duty, I shall not forget the respect which I owe to you as an assistant bishop of the church; neither shall the circumstances of my years and sacerdotal labours be so far forgotten as to induce me to affect a style of servility foreign to

the constitution of my mind and the dignity of a christian. You and I, sir, lived for many years as brethren, and I can say with truth, that I have lamented with deep regret, the cause which first produced that distance which at present subsists between us, and that I shall hail as one of the most auspicious moments of my life, the happy period which shall bring us all into the bonds of fraternal union.

Question first. Until some short time after the general convention at Baltimore, in 1808, were we not on terms of friendly intercourse, and during that period, when according to my recollection, there was no particular intimacy between yourself and Mr. Jones, did I ever attempt to prejudice your mind against him, or speak of him in your hearing, in other than respectful and affectionate terms, or did my conduct give you any reason to consider that my views in respect to him were unfriendly or hostile?

Answer. As there was no particular intimacy between Mr. Jones and myself at that period, I do not recollect that our conversation ever embraced that gentleman, or his concerns; consequently you could not have dropped any expressions of an unfriendly or hostile nature respecting him.

Question second. At the general convention in Baltimore, in 1808, did you consider me as the advocate of intolerant measures; on the contrary, was I not at that time in opposition to the sentiments of some with whom I generally acted; the advocate of measures deemed by you and your particular friends in that convention, moderate and conciliating?

Answer. Your conduct at that convention was, in my opinion, moderate and conciliating.

Question third. Soon after that convention, did not our former friendly intercourse cease, and did you not state to me in an accidental conversation on the subject, that you were informed by a friend, that I had been opposed to your appointment at St. John's Church, and that I was openly your friend, but covertly your enemy?

Answer. Soon after that convention our former friendly intercourse did cease, but from a cause very remote from any circumstances involved in the present disagreement. I perfectly recollect a free conversation in which we were engaged

but whether it was accidental or not, you must be the best judge, as it was commenced by yourself. The circumstances of St. John's Church was, I believe, brought into view, together with the particular circumstance which had produced a cessation of friendly intercourse between us, and I think, I honestly told you, that I was grieved to my heart, that amidst all the professions of civility with which you had favoured me, there should have existed on your part a want of sincerity.

It is hardly possible, sir, from the constitution of our nature, that we should pass through life without some differences and disagreements; but as the religion which we preach contains a remedy for all the difficulties to which we are exposed, should we not act wisely to take the benefit of that provision made for us in the gospel, and settle our disputes agreeably to the precepts of christianity. Is not forgiveness one of the fairest features belonging to the christian character? and is it not upon that principle that we solicit of offended heaven the forgiveness of our sins? Is it not enjoined upon us by our divine master to extend this charity to our brother, though he should sin against us seventy times seven?

When disagreements take place between brethren, how are these disagreements to be reconciled, unless those brethren will meet and converse upon the subject? Could such an interview be effected, I am perfectly convinced all existing disputes would be settled, and harmony and affection pervade our friends. Permit me, therefore, sir, to request you to adopt the salutary and becoming measure. Express your wish that the parties concerned should meet and come to an explanation. Let those who have offended their brethren apologize for their conduct; and let the party so offended imitate the example set us by the Redeemer, and throw a veil of oblivion over the failings of the transgressor. My temper, I acknowledge with sorrow, is quick, but at the same time I can say with truth, that my relents flow with as much rapidity as my resentment; and that I am never ashamed to confess an error. Yes, sir, there is no man in existence to whom I would hesitate to make an apology, were my mind convinced that I had offered him the least injury or indignity. Will you permit me to make one more observation upon the sub-

ject of a general reconciliation. You are now viewed by the church as the father of the clergy. To wound is not the characteristic of a parent; but to overlook the weaknesses of his children, and to heal their divisions, you will acknowledge, should be his duty and delight. Make therefore the attempt, and rely upon it, that the measure will secure to you the approbation of God, peace in your own mind, and the universal love of those connected with you. Could you see my heart, you would be sensible that the above observations flow from the purest motives; God, I firmly believe approves them. Accept the assurances of my regard, and believe me very respectfully yours, &c.

(Signed) RICHARD CHANNING MOORE.

Correspondence between Dr. Richard Channing Moore, and bishop Moore, September 1811.

September 13th, 1811.

Right Rev. Sir,

Since the conversation which I held with you, at your request, upon the subject of the differences existing in the Church, I have seen Mr. Jones; and have communicated to him the principles of accommodation which were suggested by you. I told him, that although you were not authorized to say, that the vestry of Trinity Church would allow him a donation, in case he would retire from their connection, still you took it for granted that they might be persuaded to comply with such a measure, provided he would consent to remove from the diocese. His reply was precisely such as I expected. He observed that he is ready to receive any proposals from the corporation over which you preside, which in the estimation of christians can be thought equitable and consistent; but refuses in the most explicit terms, to bind himself to leave his native city, or the diocese in which he resides. I do think, sir, most sincerely that the condition upon which your proposals are founded, is of a nature too humiliating to be complied with. As one of your elder presbyters, therefore, I think it my duty to express a hope, that whatever principles of accommodation may be proposed, they may not bring into view a condition so distressing to the mind, so degrading

to a public character, and so uncongenial to the principles of our civil constitution.

I remain Right Rev. Sir,
Your most obedient servant,
(Signed) RICHARD CHANNING MOORE.

To the above the bishop replied.

Bishop Moore begs leave to observe to Dr. Moore, that he misunderstood his meaning, when he supposed that Mr. Jones' leaving the diocese was a condition required. Bishop Moore's only wish was to fall on some method of dissolving the connection between Trinity Church and Mr. Jones.

Saturday afternoon, September 14th, 1811.

To which I replied,

Right Rev. Sir,

I will embrace the earliest opportunity to inform Mr. Jones of the mistake, into which *you conceive me* to have fallen; and shall be very happy if matters can be so adjusted, as to return to the church that tranquillity of which it at present is deprived.

With respect I remain
Right Rev. Sir.
(Signed) RICHARD CHANNING MOORE.

Address delivered in part, November 5th, 1811.

Right Rev. Sir,

The present moment forms a period in the church, truly important; a crisis, in which its peace and prosperity may be secured, or its ruin decided. Impressed with this sentiment, I consider it my Indispensable duty, to express my views of things, with that honesty becoming my years; and although I am sensible of the formidable opposition with which I have to combat, still cloathed with the attire of conscious rectitude, I shall advance with firmness, and shall not shrink from the discharge of that duty imposed upon me by God, and the dictates of my own heart.

Sir, the present state of things has been foreseen by the friends of the church for several years past. The prospect of

the situation, in which we are now involved, has produced in my mind the greatest disquietude ; and every exertion has been made within the compass of my power to prevent it.

I have, sir, in repeated conversations with yourself predicted the present state of things. I have told you with an aching heart, that the system which has been pursued, would necessarily lead to events the most unfavourable ; and have entreated you to interpose your authority, to save us from anarchy and confusion.

The subject, sir, of our present deliberation involves in it the happiness of an individual, in whose welfare I am deeply interested, and whose virtues entitle him to my sincerest regards. His depressed situation has not produced an alienation of my friendship, but on the contrary has attached me to him by additional ties ; and if my feeble efforts can avail in relieving him from his distresses, or in mitigating his sorrows, my heart will vibrate with sensations of the purest joy.

We are told, sir, that Mr. Jones, by the publication of his pamphlet, has disturbed the peace of the church, and that it is necessary, for the well being of the religious society to which we belong, that he should be made to feel some mark of public disapprobation. Before we proceed to inflict a punishment upon that gentleman, let us, as men, and christians, take a view of the state of things, prior to the publication of his Appeal ; and let us see whether there is not something to be discovered, which may lessen the blame attached to him, and which may have a tendency to abate the resentment of his brethren.

Mr. Jones declares in his pamphlet, that several of his colleagues in Trinity Church, have pursued a line of dictation towards him, to which no honest man could quietly submit. He has been forbidden, under the pain of their displeasure, to exchange pulpits with either Mr. Feltus or myself. The clergy with whom he is in habits of friendly intercourse, were spoken of in terms of disrespect, and branded with epithets the most unwarrantable. Mr. Jones, sir, and Dr. Harris waited upon yourself, as rector of Trinity Church, in order to ascertain whether you had any objections to their exchanging pulpits, with me, and your reply was such as became

your station. You declared that you had no objections; and told Dr. Harris that you conceived me to be a worthy man, and a useful clergyman! If those gentlemen, sir, who had imposed such a penalty upon Mr. Jones, as the loss of their friendship, had been actuated by proper principles, they would, after hearing the expression of your sentiments, have relinquished the ground they had taken, and permitted Mr. Jones to have acted agreeably to his own views. This, however, sir, was not the case; they still persisted in the resolution, which they had adopted, and treated him with unkindness and reserve. (Here I was interrupted.)

After reflecting deeply upon the subject of the difficulties in which he was involved, and conscious that the opposition of his colleagues would destroy his usefulness, he determined to bring the existing difficulties to a conclusion. He made you, sir, acquainted in the first place, with the state of things. That interference, however, which he expected to have received at your hands, was withheld, and his difficulties continued to increase. After waiting a considerable time, in hopes that your authority would have been exercised in his behalf, he called upon a gentleman, with whose virtues and moderation we are all acquainted, and solicited him to wait upon Dr. Hobart and to inform that gentleman, that Mr. Jones was desirous that all their disputes might be settled; and that he was willing to submit their difficulties to a few of the laity, whose opinion upon the subject should decide the controversy, and be final and conclusive. To this arrangement, sir, bishop Hobart objected; and consequently the attempts of Mr. Jones, to restore tranquillity proved nugatory and vain.

In this awful dilemma, Mr. Jones determined to present his difficulties to general view. As he had suffered for years in private, under the heaviest distresses of mind, he was anxious to discover whether an ingenuous public would wink at a continuance of existing evils, and countenance the oppression under which he laboured: the effect, sir, has been precisely such, as every man acquainted with human nature, would have expected. Mr. Jones's friends feel for his distresses, and are disposed to vindicate his rights, while others, bring the publication as a charge to his disadvantage, and are

determined, if possible, to render it his ruin. This statement, sir, appears to me, to contain a narration of some of the most prominent features of those difficulties, which we are called this day to settle. Here then, my fellow presbyters, here let us pause! Here let us solemnly pause! and weigh with calmness the nature of that business, which is now before us. We are called, sir, to sanction the dissolution of that connection subsisting between Mr. Jones and Trinity Church! My mind revolts at the idea, and is agitated with alarm for the safety of others, as well as for the safety of Mr. Jones. If, sir, the presbyters of the church should countenance the dismissal of Mr. Jones, they that moment establish a precedent which may operate against themselves! for I insist upon it, sir, and I express it as my honest opinion, that the moment we sanction such a measure, our private contracts with our vestries will be rendered a mere nullity, and we may, in our turn, be thrown naked upon the world. In any instance, sir, in which a clergyman may offend his bishop, the influence of that bishop may be so great, as to obtain from the vestry of the congregation to which such a clergyman is attached, a vote of the same nature with that received from Trinity Church, after which the presbyters may be convened, and the clergyman, however worthy, be deprived of his living! (Here I was grievously interrupted.)

I do not say, sir, that any bishop at present in the church, could be influenced by motives of personal resentment, God forbid! but I say, sir, considering the nature of men, such events may happen, and it is our duty, our solemn duty, to guard against them. I have frequently observed to you, sir, that the government of the church upon earth, should resemble as much as possible the government of the church in heaven! That government, sir, is established upon the basis of mercy—It breathes a spirit of pardon and forgiveness to those who have offended! and proclaims in accents of benevolence, that though our sins are like scarlet, they shall be as white as snow. I am aware, sir, that it will be observed that the forgiveness of which I speak is proclaimed upon the principle of penitence and submission.

This I grant—but let us remember, that every page in our bibles teems with an assurance that the Almighty is willing to forgive, and invites us by the most tender entreaties to return to his bosom! Is this, sir, I would ask, the precise state of things with respect to Mr. Jones? Has the declaration of a willingness to forgive him been expressed? Has any individual been authorized to go to that gentleman, and to assure him, that a proper concession for any injury which his pamphlet may have effected, would be accepted, and that he would be received into favour? I ask it before God, has any such disposition been discovered? No, sir, I can, and I will bear witness, that no such propositions of mercy have been made! On the contrary, when such questions as the above were suggested to Dr. Hobart, by Dr. Harris and myself, they did not meet with that reception becoming the importance of our inquiry. There has been no mercy seat discovered to which my afflicted friend might have recourse! The mercy seat has been obscured by clouds and thick darkness, from which nothing but lightnings and thunders have issued. (Here I was interrupted.)

With respect, sir, to the canon, by virtue of which the presbyters have been convened, it is my duty to observe that it does not in my opinion apply to the case in question. It contemplates in its expression, a full persuasion that every attempt has been made to effect a reconciliation between the ministers and congregation, and that those efforts have been ineffectual! In the present instance, sir, no exertion has been used which, in its remotest tendency, could be said to look to so desirable an object. There has been but one effort used from the beginning, and that has been, to secure the destruction of Mr. Jones, by an expulsion from that congregation to which he has been lawfully called. Another objection which arises in my mind, and which it is my duty to state, is this, that the presbyters are to be called by the bishop of the diocese. This regulation, sir, has not been complied with; but, on the contrary, we have been convened by the coadjutor bishop. When I received the letter enjoining my attendance at this time, I waited upon bishop Provoost, and requested him to inform me, whether his concurrence to

the measure had been obtained. He assured me without any hesitation, that he had never been consulted, consequently, that he could not have concurred.

With all these difficulties staring us in the face, I do think, sir, we had better stop our proceedings, and before we consent to the adoption of a measure, so serious in its nature, as the measure contemplated, calmly reflect, whether a decision of that description, may not involve us in most untoward circumstances. For my own part, sir, I shall not be present, when the question of Mr. Jones's expulsion is proposed! the ruin of that innocent man shall not be charged at my door! and in addition to that consideration, I pronounce it as my opinion, that we have not been legally and canonically called! In reflecting, sir, upon the manner in which we have been convened to deliberate upon the important question before us, the following idea occurred to me.

Had bishop Provoost been removed by death, and had bishop Hobart called me upon this occasion without the consent or knowledge of bishop Moore, would I have thought it consistent with my duty to attend? and the answer which my understanding has invariably made, was this—that I would not be justifiable—nay, sir, from motives of respect to you, I should not have listened to his summons; I would not have appeared at all.

But, sir, if notwithstanding all these considerations, we are determined to proceed, I would beg leave to call the attention of my fellow presbyters to one more particular—a consideration which may perhaps awaken their sympathy, and induce them to be cautious—Mr. Jones, sir, has a wife, and two amiable daughters, upon whose countenances may be traced in legible characters, the distresses of an affectionate, a tender and pious father. They have witnessed the oppression under which he has long groaned! they have marked with conjugal and filial regard, the sighs which have heaved his labouring bosom! Can we, sir, who have families, consent to a measure which must involve them in inconceivable trouble? Can we, sir, be willing to exercise the power, even if we should be found to possess it, of consigning to ruin an amiable family, and of crushing at one blow a fellow

presbyter? It is, sir, a farce to say, that Mr. Jones may remove to another situation, and be happy! No, sir, the odium which will be attached to his dismissal will adhere to him while he lives, and destroy his usefulness forever! Let us then exercise that compassion towards him, which we daily entreat the Almighty to bestow upon us! Let us be merciful as our Father in heaven is merciful! and let us remember, that with what measure we mete, it shall be measured to us again—let us recollect the solemnity of the occasion. Put on, as the elect of God, bowels of mercies. Let us remember, that the wisdom which is from above, is full of mercy; and instead of imitating the conduct of that priest and Levite, let us stop! examine the deep wounds which have been already inflicted upon my friend, and pour the oil and wine of consolation into them. Let us, sir, forgive, I repeat it—let us forgive, if we ever expect mercy at the hands of God.

New-York, ss. DAVID MOORE, of Staten Island, a witness produced on the part of the plaintiff, being duly sworn, deposeth and saith, that he is a minister of the episcopal church, and settled at Richmond on Staten Island, was ordained a priest on the 18th October 1811, as well as he can recollect; and has been settled at Richmond aforesaid since that time; he has never been regularly inducted rector, but upon being ordained priest, he became invested with all the privileges of rector in his parish, but not entitled to a seat in the convention: that he was called some time in November 1809, being then a deacon. From the time he was ordained priest, he has considered and doth now consider himself, under the jurisdiction of the bishop of this diocese, and as a presbyter thereof; he was not summoned to meet bishop Moore, and his presbyters in November 1811: and further he saith not.

New-York, ss. SAMUEL F. JARVIS, of Bloomingdale, in the city of New-York, a witness produced on the part of the plaintiff, being duly sworn, deposeth and saith, that he was settled as rector of the parish of St. Michael's, at Bloomingdale aforesaid, in April 1811, he then being a priest in

The episcopal church, and has from that time considered himself under the jurisdiction of the bishop of the diocese of New-York, as one of his presbyters. The deponent says, that prior to Good Friday in the year 1812, he was in the habit of exchanging pulpits with Dr. Harris, and did exchange with him on that day; soon after which the deponent received an intimation from Dr. Bowen, that the deponent's exchanging pulpits with Dr. Harris was not approved of by bishop Moore. The deponent requested Dr. Bowen to ask bishop Moore to make a communication on the subject to the deponent in writing; some short time afterwards Dr. Bowen requested the deponent to call and see bishop Moore, which he did, and received from bishop Moore a written communication, a copy of which he afterwards sent in a letter to Dr. Harris, a copy of which letter is now produced and hereunto annexed. In consequence of receiving the aforesaid communication from bishop Moore, the deponent did abstain from exchanging pulpits with Dr. Harris. In the interview aforesaid between bishop Moore and the deponent, bishop Moore asked the deponent whether he knew that Dr. Harris had protested against his, bishop Moore's, authority, and on the deponent answering that he had heard that such a protest had been entered, but that he had never seen it, bishop Moore shewed the deponent a paper signed by Dr. Harris, which the deponent understood to be the protest entered by Dr. Harris and others, to the proceedings of bishop Moore and his presbyters in the business of the plaintiff. The deponent says, that he understood Dr. Moore and Mr. Feltus had signed the aforesaid protest, and he therefore considered himself equally bound by the aforesaid written communication to abstain from exchanging pulpits with those gentlemen. The deponent was not summoned to meet bishop Moore as one of his presbyters in November 1811.

On being cross examined the deponent says, that he never has been regularly instituted as rector, and is not entitled to a seat in the convention.

The deponent being again examined on the part of the plaintiff, saith, that he considers a priest settled in the diocese, as a presbyter and subject to the jurisdiction of the bishop, al-

though not entitled to a seat in the convention. The deponent says, that his father, the late bishop Jarvis, was very cautious as to the delivery of his sentiments respecting the controversy, which has taken place in New-York, relative to the rights of bishops Provoost and Moore, supposing it probable a reference would be made on the subject to the college of bishops, in which case the decision he would have given, would have rendered the expressions of his private opinion unnecessary. The deponent never asked his father any questions of which he clearly recollects the substance of his reply; but his general impression is, that he thought the bishops, as a collegiate body, in their capacity as successors of the apostles, are the source from which alone all power in the church can emanate; and consequently, that the decision of the question respecting the claim of bishops Provoost and Moore, could be made only by that body. And further the deponent saith not.

Copy of a letter from Samuel F. Jarvis to the Rev. Dr. Harris, rector of St. Mark's Church, Bowery, New-York.

Bloomington, May 1, 1812.

Rev. and dear sir,

On Sunday the 12th of April, I learned from the Rev. Mr. Bowen, that my exchanging services with you on Good Friday, had given offence to bishop Moore; and a message was delivered to me by the same gentleman, forbidding me to do so any more. As a verbal communication, which had passed through two or three mouths, seemed to me liable to misconstruction, and therefore not proper to be made the rule of my conduct, I wished to receive my directions immediately from the bishop himself, and accordingly requested Mr. Bowen to ask bishop Moore to address me in writing. The next time I saw him he informed me that bishop Moore requested me to call upon him; I did so on Monday the 27th of April, and received from him a written communication, of which the following is a copy:—

New-York, April 27th, 1812.

This is to certify, that I think it improper for Mr. Jarvis to invite any of the clergymen, who have protested against the authority of the church, to officiate in his pulpit.

(Signed) BENJ. MOORE.

As I wish to live in unity and peace with all my brethren, you will, I am sure, duly appreciate the motives which have induced me to write you this letter.

I am, with much respect,

Reverend and dear sir,

Your friend and brother,

(Signed) SAMUEL F. JARVIS.

New-York, ss. ALBERT SMITH, of the city of New-York, a witness on the part of the plaintiff, being duly sworn, deposeth and saith, that on Monday morning about nine o'clock, the day on which Dr. Hobart's pamphlet in answer to the plaintiff's "Solemn Appeal" appeared, Dr. Hobart called at the house of the deponent, and observed that he supposed the deponent had read the plaintiff's pamphlet, which he had done, and requested him to go to Mr. Swords's and get his, Dr. Hobart's, answer to it, which the deponent did; Mr. Swords making some objection to letting the deponent have it, until he was told, that the deponent came at Dr. Hobart's request, when Mr. Swords gave him a copy, and requested that the deponent would return it when he had read it. About an hour after leaving Mr. Swords's store, the deponent met Dr. Hobart, and told him what had passed between Mr. Swords and him, when Dr. Hobart said, that the deponent might keep the pamphlet as long as he pleased, and to read it with deliberation. Dr. Hobart expressed regret at being obliged to publish it, but that it was insisted upon by his friends, as the plaintiff was gaining ground on him so fast, as they said. The deponent, both before and after the aforesaid interview with Dr. Hobart, endeavoured to obtain a copy of the "Solemn Appeal," without effect, having understood that the sale was stopt;—and further he saith not.

New-York, ss. WILLIAM WALKER, of the city of New-York, a witness produced on the part of the plaintiff, being duly sworn, deposeth and saith, that he is a book binder, and stitched the whole edition of the "Solemn Appeal," which he delivered to William Barlas, as agent of the plaintiff, and afterwards by the direction of Mr. Barlas, the deponent distributed parts of the edition to other book sellers. That some time in the latter end of June, or the beginning of July, 1811, Mr. Barlas directed the deponent to collect all the aforesaid pamphlets which were unsold, which he did, and they were brought to Mr. Barlas's store, and counted on the 8th of July, and stowed away in the garret of Mr. Barlas, where they still remain, so far as the deponent knows. The deponent says that Mr. Barlas, on account of indisposition, is not able to attend to testify in this cause.

On being cross examined he says, that there were between 900 and 1000 of the "Solemn Appeal" published, and as well as he can remember, about 500 were recalled. Since the time the pamphlet was recalled as aforesaid, it has been again offered for sale in Mr. Barlas's store, and in others; but he is pretty confident that they were not again offered for sale previous to November 1811;—and further he saith not.

New-York, ss. SAMUEL HANNAY, of the city of New-York, a witness produced on the part of the plaintiff, being duly affirmed, saith, that he is a clerk in the book store of Collins & Co. who received a number of pamphlets entitled, "A Solemn Appeal," from William Barlas, a book seller, for sale, all of which they sold, and about the latter end of June, or the beginning of July, 1811, Barlas directed the sale of that pamphlet to be stopt, and they received no more;—and further the deponent saith not.

New-York, ss. THOMAS FARMAR, of the city of New-York, merchant, a witness produced on the part of the plaintiff, being duly sworn, deposeth and saith, that he was chairman of a committee appointed by a number of episcopalians, who met on the subject of the differences that subsisted between bishop Hobart and the plaintiff; the object of which

committee was to endeavour to obtain a settlement of the aforesaid differences. That committee appointed a sub-committee, consisting of Peter Mesier, P.J. Munro, J. Farquhar, and the deponent, who were directed to wait on bishop Hobart and the plaintiff to endeavour to effect a reconciliation. The sub-committee had an interview with bishop Hobart at his house on the 18th January 1812, and the substance of what passed between them, is contained in a paper written and subscribed by the members of the said committee at the time; a copy of which is hereunto annexed. The deponent says, that afterwards, on the 21st or 22d of the aforesaid January, the said sub-committee waited on the plaintiff, and the substance of what passed between them is contained in a paper subscribed by the aforesaid members of the last aforesaid committee, a copy of which is also hereunto annexed. The deponent says, that the aforesaid sub-committee afterwards, in the month of March, in the year last aforesaid, addressed a letter to the vestry of Trinity Church, a copy of which is also hereunto annexed, and that in consequence thereof, communications and subsequent correspondence, between the aforesaid committee and a committee of the said vestry took place, copies of which communications and correspondence are also hereunto annexed. The deponent says, that at the meeting of episcopalians herein before mentioned, he thinks there were two or three hundred present.

The deponent being cross examined, says, that the interview between bishop Hobart and the sub-committee herein before mentioned, was subsequent to the proceedings of bishop Moore and his presbyters against the plaintiff, and his consequent suspension. The general meeting of episcopalians, which he has before spoken of, was in consequence, as the deponent understood, of the differences that subsisted between the clergy of Trinity Church, and particularly bishop Hobart and the plaintiff, and in order to see if means could not be adopted to heal those differences. He has no recollection of the terms of the notice which convened that meeting, but he thinks it probable, that it embraced also an invitation to those who were dissatisfied with the proceedings of bishop Moore and his presbyters against the plaintiff. He thinks that those

proceedings were noticed at that meeting, and disapproved of. The deponent says, that he has no recollection of any reason given by Dr. Hobart for declining the conference with the sub-committee as aforesaid, but what are contained on that subject herein before referred to.

On being again examined on the part of the plaintiff, says, that bishop Hobart's pamphlet, entitled, "A Letter to the Vestry of Trinity Church;" was sent to him, as he believes, by his neighbour, Mr. Rogers, and he thinks it was marked "private;"—and further he saith not.

Report of Committee appointed to confer with bishop Hobart.

The subscribers having been appointed, by a resolution of the 17th instant, a committee to wait upon the right rev. bishop Hobart, and to acquaint him, that the general committee and their constituents sincerely deplored the existing dissensions in the church, and had authorized and instructed us to confer with him upon the means most proper and expedient to be adopted, and most likely to prove efficacious in healing those dissensions, and restoring peace and harmony to the church,

Respectfully Report,

That on the 18th instant we waited upon bishop Hobart, at his dwelling house, and acquainted him with the said resolution. The bishop after expressing a hope that his answer would not be deemed disrespectful to us *individually*, said, he should decline all conference with us upon the subject; but if we thought fit to make him a written communication, *he would then consider whether he would answer it*; and he concluded by repeating, that he hoped this answer would not be deemed disrespectful to us *as individuals*. Shortly afterwards he said, he had no objection to add a further idea, viz. it *might* be inconsistent with his station in the church to admit, by a conference with us, the *legality* or *propriety* of the meeting and its proceedings. His situation was a delicate one; his act might become a precedent. He hoped we perceived the propriety of his conduct. He must decline the conference.

We answered, that although our respect for him would not permit of our pressing a conference, which he was desirous

to decline, yet we must be allowed to remark, that we did not perceive, and could not admit it, to be either correct or right, that a bishop or pastor of a christian church should decline to confer with a portion of his flock, upon the means of healing dissensions in his church, and restoring its peace and harmony. The bishop replied, he declined a conference with us as the representatives of others, and not as individual members of the church. We answered, that we did not perceive his distinction to be correct; that if the members of his church were individually entitled to confer with him upon the subject of dissensions in it, our constituents, being members of the church, we as their delegates must be so entitled. The bishop made no reply, and the conversation ceased.

(Signed) JAMES FARQUHAR,
THOMAS FARMAR,
PETER JAY MUNRO,
PETER MESIER.

New-York, 18th January, 1812.

Report of the Sub-Committee to confer with Mr. Jones.

The subscribers having been appointed by a resolution of the 20th January last, a committee to wait on the rev. Mr. Cave Jones, and to make to him communications similar to those which they were by a resolution of the 17th of that month directed to make to the rev. bishop Hobart,

Respectfully Report,

That upon the 21st or 22d of that month, they, in obedience to the said resolution, made to the rev. Mr. Jones communications similar to those which they had made to the rev. bishop Hobart, as stated in their report of the 18th January last. That Mr. Jones assured your committee that he greatly and sincerely deplored the existing differences in the church, and that he would readily consent to the adoption of any measures not inconsistent with his duties and honour, which would tend to heal those differences.

(Signed) THOMAS FARMAR,
JAMES FARQUHAR,
PETER JAY MUNRO,
PETER MESIER.

25th March, 1812.

*To the Rector, Wardens, and Vestrymen of Trinity Church,
Greeting.*

At a late meeting of a large number of episcopalians of this city, a committee was appointed to take such measures as might seem most conducive to the re-establishment of peace in our church, of which committee we as the constituted organs have thought that we could not better pursue the objects of our appointment than by respectfully addressing you upon the subject. We find that a clergyman of our church to whom very many of its members are warmly attached, who was born in our city and has been distinguished from his infancy for his exemplary piety and morals, who has served the church with fidelity and zeal for many years, is now severely suffering in consequence of proceedings which have been had against him at your instance. It is not the object of this address to examine either the justice or propriety of the measures which have been pursued against the rev. Mr. Jones, we only regard at present the effect, which they have had to disturb the peace of the church, and we intreat you to consider whether there are not some means by which tranquillity and order may be restored.

We are confident that if the same spirit of reconciliation which is felt by Mr. Jones and his friends universally prevailed, there would be no difficulty in settling the existing differences on terms honourable to the church: they might be referred to the consideration and determination of independent, disinterested and impartial men. We are authorized to say that this is a means in which Mr. Jones and his friends will cheerfully acquiesce. If his proposition should not meet your approbation, we beg to be permitted to say, with all that respect which is due to you as individuals or as members of the vestry, that we hope you will feel it your duty to suggest some terms on which the affairs of the church can be settled, and that order and peace be restored which prevailed even when we were without the superintending care of a single bishop. With the same views with which we now address you, we applied to Dr. Hobart, not only on account of his standing in the church, but because we consider him more immediately connected than any other with the existing dif-

ferences, and because we have a firm belief that if he would co-operate with us there would be little difficulty in effecting the purpose of our appointment; but unfortunately, as we cannot but think, Dr. Hobart would not condescend to notice our application. Under these circumstances we address ourselves to you, very respectfully but very earnestly intreating you to become on this occasion peace makers, and to employ as such that authority and influence which the church has delegated to you.

We can confidently assure you that Mr. Jones is ready to do any thing which as a christian and honourable man can be required of him, and his friends will most cordially co-operate in any measures which are calculated to subserve the true interest of the church.

We have the honour to be, gentlemen,

Your most obedient humble servants,

(Signed by the committee) THOMAS FARMAR,
JAMES FARQUHAR,
PETER MESIER,
PETER J. MUNRO.

The Committee's Proposition to the Committee of the Vestry of Trinity Church.

Although we are fully persuaded that the sentence pronounced against the rev. Mr. Jones, upon the complaint of the vestry of Trinity Church, is illegal and unjust, and ought to be annulled, for reasons assigned in the resolutions of the body whom we represent, yet being sincerely desirous to heal the unhappy dissensions existing in our church, we beg leave to submit to you the following observations and propositions.

We hold that a priest is not responsible to his congregation or to his bishop for any part of his extra or unofficial conduct, which his civil rights and moral duties authorize.

That he has a civil and moral right to publish truths unfavourable to any active enemy, in order to diminish his power or opportunity of doing injuries, and in order also to manifest the propriety of his own conduct relative to such an enemy.

That every free citizen, who is interested in the election of an officer civil or ecclesiastical, has a civil and a moral right to publish *truth*, calculated to show that this or that candidate is or is not qualified for the office.

If those propositions be true, it appears to us that the only question to be decided is, whether what Mr. Jones had published previous to the sentence against him, to wit, his pamphlet called a "Solemn Appeal to the Church," was *true* or *false*.

To decide this question we propose to the vestry.

1st. That Bishop Hobart shall bring an action for a libel or for slander against Mr. Jones.

2d. That Mr. Jones shall plead that the whole is true.

3d. That if the court and jury should acquit Mr. Jones he shall be replaced in statu quo.

4th. That if the court and jury should find him guilty, then those whom we represent shall cease to support him, and Mr. Jones shall acquiesce in the sentence.

5th. That until the final decision of the suit so to be instituted a sum of money equal to Mr. Jones's former compensation shall be regularly paid to him by the vestry.

(Signed by) THOMAS FARMAR,
JAMES FARQUHAR,
PETER MESIER,
PETER JAY MUNRO.

March 23d, 1812.

A Letter from the Committee of the Vestry.

Gentlemen,

The committee of the vestry of Trinity Church have reflected upon what passed at their conference with you last evening, and it does not appear to them that the written proposition you made them would be calculated, if accepted, to allay, but would rather tend to increase the irritations which at present unfortunately exist, and for this and other reasons they decline them; but being truly and sincerely desirous to agree upon any measure which may afford a prospect of healing divisions, without violating their own duty or self-respect, they propose to you, to submit to the arbitra-

tion of respectable men, to be mutually agreed on, all the existing legal differences now subsisting between the vestry and Mr. Jones.

We are, gentlemen,

Your obedient servants,

DAVID M. CLARKSON,

WILLIAM BAYARD,

T. L. OGDEN,

PETER AUGUSTUS JAY.

March 23d, 1812.

Letter to the Committee of the Vestry.

New-York, March 24th, 1812.

Gentlemen,

We have been this afternoon favoured with your letter dated the 23d instant, informing us that the committee of the vestry of Trinity Church decline accepting the written propositions we made you yesterday, and proposing to us to submit to the arbitration of respectable men, to be mutually agreed on, all the existing *legal* differences now subsisting between the vestry and Mr. Jones.

Permit us, gentlemen, to remark, that we have, in our letter to the vestry, already had the honor to propose to them to submit all questions and differences subsisting between them and our constituents, (including those existing between the vestry and Mr. Jones) to the arbitrament of independent and impartial men; if therefore it be your intention to propose to us an arbitration equally extensive, that is, one embracing all the existing differences before mentioned, we hasten to communicate to you our joyful acceptance of it; but if you mean to offer an arbitration limited and confined to a portion of those controversies, to the exclusion of others of them, as the words *legal* differences seem to imply, then we take the liberty of requesting you to specify the particular differences or points, to which you propose the arbitration should be confined.

With a sincere desire that we may become the happy instruments of re-establishing peace and harmony in our church upon just and proper principles,

We remain, gentlemen,

Your most obedient servants,

(Signed) THOMAS FARMAR,
JAMES FARQUHAR,
PETER MESIER,
PETER JAY MUNRO.

As the committee of which we are the organs will meet to-morrow evening, we request to be favoured with your answer in season to be laid before them.

Letter from the Committee of the Vestry

March 25th, 1812.

Gentlemen,

We have received your letter of last evening, desiring our explanation of the term *legal differences*, used in our communication of yesterday. We used that term to designate, without a minute enumeration of particulars, those matters which we think the proper subjects of an arbitration. We intended to submit *every thing* which could properly be discussed in a court of justice in any suit between Mr. Jones and the vestry: and the better to enable the arbitrators to make a final and satisfactory arrangement, we now beg leave further to propose, that if they should think the proceedings heretofore had against Mr. Jones illegal, they shall then proceed to make such award as under existing circumstances shall appear to them best calculated to do justice to the parties in difference, and to promote the peace and harmony of the church.

If (as we trust you will) you should accede to our offer, we would then further propose, that the persons to be selected as arbitrators should be gentlemen of distinction either of the clerical or legal professions. If you should think any matters proper for arbitration are improperly excluded by the general description we have used, we beg you will have the goodness

to specify particularly the points which you wish the arbitrators to decide.

We are, gentlemen,

Your very obedient servants,

(Signed) DAVID M. CLARKSON,
WILLIAM BAYARD,
T. L. OGDEN,
PETER AUGUSTUS JAY.

To the Committee of the Vestry.

March 27th, 1812.

Gentlemen,

We acknowledge the receipt of your communication of the 25th instant, consenting to submit to arbitration every thing which could be properly discussed in a court of justice between Mr. Jones and the vestry. We accede to this proposal, with the following explanations of our understanding of it, viz. That the arbitrators shall decide upon the *legality* of the proceedings and sentence of the convocation against Mr. Jones; that we shall be at liberty to impeach their validity for any cause which the arbitrators may deem sufficient to render them invalid; that if the arbitrators shall decide that the sentence is *illegal*, then Mr. Jones shall retain his office of assistant minister of Trinity Church, with the usual emoluments as heretofore; and that if they shall adjudge the sentence to be *legal*, then they shall determine the terms upon which he shall resign that office. It is also understood that there shall be no technical objections to the contract between the vestry and Mr. Jones for want of the corporation seal.

We are, gentlemen, &c.

(Signed) T. FARMAR,
J. FARQUHAR,
P. MESIER,
P. J. MUNRO.

From the Committee of the Vestry.

March 28th, 1812.

Gentlemen,

We have had the pleasure of receiving your letter of last evening, acceding to the proposals we have made for an

arbitration, with certain explanations of your understanding of it. In those explanations we concur with you, except as to one point, concerning which, we are not certain that we rightly apprehend your meaning: we therefore think it right to add, that if the arbitrators shall decide that the sentence against Mr. Jones is illegal, then the vestry are to consider Mr. Jones as holding precisely the same office that he held before any difference existed between him and them, and by the same tenure, and that with respect to emoluments, his rights shall be exactly what they were.

It would seem to us, that if the legality of the sentence should be established, it ought to be final in relation to Mr. Jones's compensation as well as to the propriety of dissolving his connection with the vestry; but in as much as Mr. Jones was not heard on that subject before the convocation, we are willing to wave any advantage the vestry might derive from that sentence in regard to the amount of Mr. Jones's compensation, and to leave that subject to be decided by the arbitrators. And we think that the want of the corporation seal to the contract between the vestry and Mr. Jones is a circumstance of which no advantage ought to be taken.

We are, gentlemen,

Your obedient servants,

(Signed) DAVID M. CLARKSON,
 WILLIAM BAYARD,
 T. L. OGDEN,
 PETER AUGUSTUS JAY.

P. S. As the vestry will meet at 4 o'clock this afternoon, we will be obliged to you for an answer before that time.

To the Committee of the Vestry.

New-York, March 28th, 1812.

Gentlemen,

We have received with great satisfaction your communication of this date.

Your understanding of the explanation contained in our letter of last evening is correct; we presume therefore that the selection of arbitrators is all that remains to be done.

We are, gentlemen,

Your most obedient servants.

(Signed) THOMAS FARMAR,
JAMES FARQUHAR,
PETER JAY MUNRO,
PETER MESIER.

Copy of a letter from Bishop Hobart to the Rev. Mr. Judd.

New-York, February 26, 1812.

Rev. and dear sir,

The rev. Mr. How received yesterday your letter of the 24th instant, announcing the proceedings of a late convocation of episcopal clergy of the church in Connecticut. It is deemed expedient and respectful to make some remarks upon these proceedings in the form of a letter addressed to you, and to transmit copies of this letter to several of the brethren in your state. That these remarks may therefore be the better understood by them, I take the liberty of copying your letter to Mr. How, which is as follows:

Norwalk, February 24, 1812.

Rev. and dear sir,

I take the liberty to inform you, that at a convocation held in New-Haven on Wednesday last, the clergy of this state, deeply feeling the unhappy situation of the church in New-York, appointed several of their brethren to visit that diocese, and in the spirit of meekness to exhort them to lay down their weapons, and to seek for peace. We all sympathise with them in their affliction; and believing that when one member suffers, all the members must suffer with it, think it our duty, to beseech them for the honour and safety of the church, to be reconciled to each other. We do not presume to dictate to our brethren, but rather in love to entreat them to terminate the unhappy controversy in which they have been engaged. With this disposition, several of the clergy of this state, will take the liberty to wait on their

brethren in New-York, on Thursday the 12th day of March next, on this painful but important duty.

Your's affectionately,

B. JUDD.

From another quarter we have obtained the information that the convocation mentioned in your letter, was specially convened by bishop Jarvis for the purpose of taking into consideration the present situation of the church in this diocese; that an address was delivered by him recommending the adopting of some measures for the restoration of peace and harmony; and that at this convocation, two resolutions were passed in substance as follows: The first, that the clergy in the state should rise at six o'clock every Friday morning during lent, to pray in an especial manner for the church in New-York. The second resolution directed the appointment of a committee by the convocation to wait on their brethren in New-York, and to counsel them to peace and unity.

You and I, my dear sir, have long been connected in intimate friendship, and it cannot be necessary for me to make professions of my unabated regard. To many of my brethren in Connecticut I stand in the same relation, having been often associated with them in our ecclesiastical conventions, and cherishing for them the sentiments of sincere esteem. We all indeed feel confident in the good intentions of Bishop Jarvis, and of our brethren towards us; and it is this confidence only which abates the excessively unpleasant feelings which the information of your proceedings excited in our minds. The tenor of these proceedings, we trust without design on your part, strongly sanctions the idea that the clergy in New-York are engaged in violent personal contests, involving no great interests of public or private character, and no important and fundamental concerns of the church; and excited and continued by passions, which it is the duty of every christian to repress, and which are hazarding the honour, the safety, and the peace of the church. In consequence of this, we are to be exhorted to "peace and unity, to lay down our weapons, and to seek for peace, to terminate

our unhappy controversy, and to be reconciled to each other." Now we do not think that this is the opinion seriously entertained of us by our brethren in Connecticut, though this is the obvious construction of their proceedings, and of the language of your letter:

You cannot but be aware that the present controversy originated in a wanton attack, in a printed pamphlet, by the rev. Cave Jones, upon the characters of some of the clergy, and of one clergyman in particular; that the charges contained in his pamphlet, resting as they almost did, on his simple affirmation, were proved to be utterly unfounded, by the fullest and strongest testimony, and were traced to the most unworthy passions. In the indulgence of these passions, the individual who was the object of them, was secretly defamed; a systematic plan to destroy his reputation and influence was prosecuted; and thus an attempt was made to excite the most injurious divisions in the church. You cannot but be aware that these charges, so far from being retracted, have been renewed with increased bitterness, and backed by others more odious in their nature, and virulent in the terms in which they are urged. Admitting then that the present controversy is merely *personal*, we really know of no precept of christianity, and no dictate of the christian spirit, that enjoins or prompts the sacrifice of the dearest rights of character, and the granting of impunity to calumny, by forgiving an offending brother, or being reconciled to him, unless "he turn and repent." But this is not the most serious or the most important aspect which this business presents. Culpable as this attack was deemed upon private character, and upon the authority, honour and peace of the church, no steps were taken for the trial or punishment of the offender, in a case where his condemnation must have been inevitable, and his punishment exemplary. The vestry of Trinity Church, however, exercising an undoubted right, and an important duty, with very great unanimity, judged the dissolution of the connection between this individual and Trinity Church, of which he was an assistant minister, to be indispensable to the peace and prosperity of the church. The course pointed out by the canons was deliberately, regularly

and solemnly pursued, and the decision of the authority of the church, in due form was made. This decision was the signal for the most virulent attack upon the bishop and presbyters who pronounced it. Persons, who from the forbearance which had been practised, had become partizans, with only a partial view of the subject, were excited by the cry of persecution.—This cry, which vibrates on so many feelings of the human heart, engaged some new adherents.—Views influenced in a greater or less degree by prejudice, by personal pique and enmity, or by jealous and sordid considerations arising out of the local circumstances of Trinity Church enlisted some more partizans. A systematic plan for the subversion of the decisions of the church, and for the impeachment of the acknowledged jurisdiction of its bishop was organized. The publication of another pamphlet by Mr. Jones, who had contumaciously contemned that jurisdiction and its decisions, abusing in the most violent terms his bishop, his fellow presbyters, and the vestry of Trinity Church, was the signal for an attack upon their public and private characters in a newspaper. In this newspaper, under the avowed influence and control of his friends, Mr. Jones appeared in his own name! and one of the principal authors of the ribaldry, invective and slander, which for months have filled its columns, is a degraded clergyman of our church. By this newspaper, and by other arts, were the people inflamed and prepared for a public meeting; in which the characters of some of the clergy were attacked, and resolutions passed, highly censurable both in matter and language, arraigning the legality and justice of the proceedings against Mr. Jones; and many persons were put on the board appointed by this meeting, without their consent. Thus it is evident that the differences here are not of a nature merely private and personal. They involve the fundamental interests of the church, and the contest is between the authority of the church exercised legally and canonically, and supported by almost all the clergy of the state, and beyond all comparison, the largest proportion of the laity, and individuals who have engaged in the most violent and unprincipled means to subvert this authority. Judge then our astonishment when we find this im-

portant fact, without design we trust, unnoticed by our brethren in Connecticut; and those who exercise and support the authority and discipline of the church, committed to them by the divine head, are placed on the same ground with the individual who commenced and continues these outrages, and those who support him; and they are mutually exhorted to peace and amity. The administrators of the laws are exhorted to be reconciled with those who are in contumacious rebellion against them, "to lay down their weapons, to terminate their unhappy controversy, and to seek for peace."

But this is not the most important, nor the most unpleasant view of the subject. The church in this diocese, like the church in every other, is competent to the management of its own concerns, and the administration of her discipline. Cherishing for her sister churches that warm affection which, as the members of the same divine body, she owes them, she can, however, acknowledge no right in them to interfere with her concerns, except when they are associated with her, under the provisions of the constitution, in the general ecclesiastical convention; and *then*, only so far as respects *general* laws equally operating. Such an interference would be the fruitful source of jealousy, of intrigue, of dissension, and of other evils fatal to the union and honour of the church, which in the fourth article directs that every bishop shall confine the exercise of his office to his own diocese, except when requested by a state destitute of a bishop, and one of the canons prevents a congregation or minister in one diocese from being connected with the convention of any other diocese. These provisions all aim at the preservation of the independency of the diocesan authority. The interference then of the church in one diocese with the concerns of another, even by the expression of an opinion or the offer of counsel, *unsolicited*, is a matter inexpressibly delicate, founded also, as such an opinion generally must be, on very imperfect and partial views. We cannot but consider the late proceedings in Connecticut, as in some degree liable to this charge of interference. The convocation appears to have been called for the special purpose of deliberating upon the state of the church in this diocese; and resolutions were passed, which

are indirectly calculated to weaken the discipline and authority of the church, and to degrade it in the view of the world, by considering the disputes consequent upon the exercise of that authority as merely personal; and by classing those who exercise it with those who oppose it, and counselling them both to seek for peace. Much as we respect and value our brethren in Connecticut, and highly as we appreciate their motives, this is an interference which our own rights, our own honour, and the interest of the church in general, and our own in particular, *forbid us ever to admit*.

For the honour of the church we have no fears, as far as depends upon those who exercise its authority. For the disgrace which others bring upon it, we cannot be accountable. Nor are we apprehensive of the safety of the church. Assure our brethren in Connecticut, that of near *fifty* clergy in the diocese there are scarcely *six* who are not united in affection as they are in sentiment, and determined by the blessing of God, "through evil report and through good report," whether supported or discouraged by their brethren elsewhere, to preserve, as far as depends upon them, the authority of the church from disgrace and subversion; and we have the cordial co-operation and support of the great body of the laity, and of those in particular who have long been most actively engaged in the concerns of the church.

We are not insensible to the affectionate sympathy of our brethren in Connecticut; and when that sympathy shall be directed to those, who through unusual difficulty and unparalleled outrage, are exercising and defending the authority of the church, the assurance of their sympathy and cordial support will be most respectfully received and valued.

Such sympathy and such support, we recollect, were given to the church in Connecticut on an occasion when its discipline was threatened. The individual who writes this letter, attended, by request, a convocation at Stamford, and gave his best aid, small as it may have been, to the authority of the church in Connecticut in its contest with a degraded clergyman. In every general convention the deputies from New-York took an active and efficient part in favour of that authority; and one of them, the individual who now addresses

you, was particularly decided in his support. Whatever opinion may have been given by the bishops on the subject of a certain declaration, officially made by them concerning Ammi Rogers, was in consequence of a *request* and an *application* for this purpose from the bishop in Connecticut. But when Mr. Rogers was rending the peace of the church in that state, organizing opposition to its authority, and assailing the private and public character of the bishop and clergy, had a convocation unsolicited by the church there, been called in New-York to consider the situation of the church in Connecticut; and had this convocation passed resolutions and appointed a committee, exhorting the authority of the church in that state to *peace and amity, to terminate their unhappy controversy, to lay down their weapons of warfare* with Ammi Rogers and his adherents, and to *seek to be reconciled to him*; we hardly think our interference would have been regarded without astonishment, or without feelings bordering on momentary displeasure.

We indeed need the prayers of our brethren in Connecticut; and we trust that when they pray for the *peace* of our Zion, it will be for a peace which secures the authority, the order, and the honour of the mystical body of Christ; and we hope that they will add the prayer, that the bishop and their brethren here, may have grace “to *do* as well as to *suffer* the will of God;” and while they “so minister discipline as to forget not mercy,” may “be so merciful as not to be too *remiss*.”

The sentiments expressed in this letter, are sanctioned by bishop Moore and several of his clergy in the city; and we have no doubt would receive the sanction, with very few exceptions, of the presbyters and clergy throughout the diocese.

Believe, my dear sir, that we are sincere in our expressions of regard and respect for the bishop and brethren in Connecticut, and that I am,

With real esteem,

Your's most truly

(Signed)

JOHN HENRY HOBART.

The rev. Bethell Judd.

*Extracts from the Journals of the Vestry of Trinity Church,
produced by agreement.*

8th September, 1800.

Resolved, that a committee be appointed to inform Mr. Hobart, that he will be received as an assistant minister to this corporation, on the same terms as to salary as those gentlemen already appointed. Messrs. Hamersley, Charlton and Gaine were appointed a committee.

Rev. Sir,

We are a committee appointed by the vestry of Trinity Church, for the purpose of communicating to you their wishes for your acceptance of an assistant minister in the churches under their care, upon the same terms on which the other assistant ministers are placed; but upon condition, that you do engage to perform divine service in one of the churches on Sunday evenings, until another assistant minister may be called, who will take a share of that duty.

The vestry have recommended it to the rector, in arranging the duties of the several assistants of the day, to have a regard to this additional share required of you.

(Signed) JOHN CHARLTON,
ANDREW HAMERSLEY, } Committee.

New-York, Sept. 17th, 1800.

The Rev. John Hobart to Dr. John Charlton.

Sir,

I take the liberty of informing you, as chairman of the committee who presented to me the call from the vestry of Trinity Church to the office of an assistant minister, that I accept the said office on the terms stated in the call. The congregation with which I am at present connected, have exerted themselves so much to render my situation comfortable and happy, that I think I cannot with delicacy and propriety leave them before the spring, unless they should signify to me that they have chosen another minister, and are willing to dispense with my services. Permit me, through you, sir, to express to the vestry my sensibility to the polite and honourable manner in which this business has been conducted. The best evidence that I can give of my

feelings, will be an endeavour to act in all cases with fidelity and independence, governed only by a sincere regard to the sacred dictates of conscience and duty. The station would require the judgment and experience of more advanced years. I shall have therefore a peculiar claim on the friendship and counsel of the vestry, on the candour and support of the congregation, and on the affectionate advice and aid of my superiors and brethren in the ministry. Thus strengthened and supported, while I endeavour faithfully to discharge my duty, I trust that I may hope for the presence and blessing of Almighty God. With sentiments of sincere respect for yourself and the committee, and for the rector and vestry of the church,

I am, sir, your obedient servant,

(Signed) JOHN HENRY HOBART.

Dr. Charlton.

12th January, 1801.

Resolved, that it is expedient to call without delay another assistant minister, and thereupon the rector nominated the rev. Cave Jones as a proper person, which nomination being approved of by the board, it was further resolved, that Dr. Charlton, Mr. Hamersley, and Mr. Gaine be a committee to inform Mr. Jones of his appointment, and that the call be on the same terms as that to Mr. Hobart.

13th July, 1801.

Resolved, that the treasurer pay the rev. Mr. Jones one hundred pounds (the same donation as granted to Mr. Hobart) as a compensation for his expences of removing to this city.

14th December, 1801.

Resolved, that the treasurer pay the same donation to the clergy for the present year, as was allowed them the last year.

THE assistant ministers of Trinity Church, beg leave to call the attention of the vestry to the subject of their salaries: considerations of delicacy, which have hitherto prevented them from pressing this subject, now yield to necessity. They are obliged explicitly to declare, that their salaries are scarcely adequate, by the exercise of economy, to

their current expences: any provision for the future exigencies of their families, to which it is natural for them to look with some solicitude, is entirely beyond their reach. They conceive that the vestry will not hesitate to admit that when a church possesses ample means, it is bound to make a full and liberal provision for its clergy. If then a permanent addition to their salaries, or the providing for them houses be deemed inexpedient or impracticable, the income of the assistant ministers may be sufficiently enlarged by increasing the gratuity which is annually voted to them.

As the liberal dispensers of the ample funds which Providence hath put into their hands, it is presumed the vestry will take pleasure in placing their clergy on an honourable and independent settlement; acting on this enlarged and liberal principle, they will not permit any minute objections to influence them in this business.

The assistant ministers beg leave further to suggest, that the annual grant of the gratuity at this season, would for many obvious reasons be more convenient than at the commencement of the winter. They also presume, that they may rely on the regular continuance of whatever addition may be made to their income.

The above considerations are submitted with those sentiments of esteem and respect, which the assistant ministers are bound to cherish for all the members of the church, and particularly for the respectable individuals who compose the vestry; and they only further express the hope that a decision on this subject may not be protracted.

(Signed)

ABRM. BEACH,
J. H. HOBART,
CAVE JONES.

The rector, church wardens, and vestrymen of Trinity Church.

May 31, 1802.

9th June, 1802.

A representation from the assistant ministers of Trinity Church, upon the subject of their salaries, was presented to the board and read, whereupon resolved, that the sum of two hundred pounds be paid to the rector and each of the

assistant ministers, and that the farther consideration of the said representation be deferred.

14th April, 1803.

Resolved, that two hundred and fifty dollars be given to Mr. Hobart, to relieve him from some embarrassments occasioned by sickness in his family.

9th June, 1803.

Resolved, that the treasurer pay the rector and each of the assistant ministers, five hundred dollars in addition to their annual salaries for the present year.

10th May, 1804.

Resolved, that the application of the assistant ministers for the increase of their salaries, be referred to Messrs. Le Roy, Bayard, Watts, Onderdonk and Rogers.

14th June, 1804.

The committee, to whom was referred the application of the assistant ministers, reported, that in their opinion an addition of two hundred pounds should be made to their yearly salaries for the ensuing seven years, so as to make it equal to seven hundred pounds per annum. Also, that a donation of two hundred pounds be now paid by the treasurer to the rector and each of the assistant clergy. Which report was agreed to.

1st June, 1805.

Resolved, that similar donations be made to the rector and assistant clergy, in addition to their salaries for the present year, as were made to them last year.

12th June, 1806.

Resolved, that the same allowances to the clergy of the church, in addition to their salaries, as were made last year, be given for the present year.

11th June, 1807.

Ordered, that the treasurer pay each of the clergymen of this church, the like donation of five hundred dollars, as was paid to them last year,

9th June, 1808.

Ordered, that the treasurer pay the clergy of this church a donation of seven hundred and fifty dollars each, for the present year.

13th July, 1809.

Ordered, that the treasurer pay to the rector and the several assistant clergymen of this church, a donation of one thousand dollars each for the present year.

7th November, 1810.

Ordered, that the same donations be made to the clergy of this church for the present year, as were made last year.

13th June, 1811.

The state of the church being under consideration, the following resolutions were unanimously adopted:—Resolved, that from the circumstances and situation of the congregations associated with Trinity Church, it has become expedient that the connection between Trinity Church and St. George's and St. Paul's chapels be dissolved, and that the said chapels be endowed and established as separate churches in like manner as Grace Church has been established.

Resolved, that the foregoing resolution be referred to a committee to devise and report to the board a plan for carrying into effect the objects therein referred to.

Resolved, that a committee be appointed to take into consideration the present situation of the church, and to confer with the rector and assistant rector upon such matters in relation to the same as they shall judge proper.

The board having proceeded by ballot to the choice of a committee for the purposes expressed in the second resolution, Messrs. King, Harison, Clarkson, Le Roy and Raymond were duly chosen, and the same persons were thereupon appointed a committee for the purposes expressed in the last resolution.

September 5th, 1811.

A letter addressed to the vestry, by the rev. Mr. Cave Jones, was received and read.

The committee to whom was referred the resolution of the vestry respecting the separation of St. George's and St. Paul's chapels, and who were appointed to take into consideration the present situation of the church, made a report in the words following:—

“ The committee to whom was referred the resolution of the vestry concerning the separation of St. George's and

St. Paul's chapels, and who were likewise instructed to take into their consideration the state of the church, respectfully report,

“ That on the former subject they have conferred with the committees appointed for this purpose by the congregation of St. George's and St. Paul's. In the course of this conference they have stated and explained the reasons which have influenced the vestry to propose a separation, and have moreover answered, according to their best discretion, such queries as have been made by these committees, respecting the endowment of the said chapels, and concerning those matters about which information was desired. Hitherto the committee have received no definitive communication from the committee of the two chapels. Further conferences may be deemed requisite, and some time may yet be necessary to enable these congregations to form a satisfactory determination. Whenever this shall be done, no time will be lost in laying the same before the vestry.

“ On the latter subject referred to the committee, so far as the same has been examined, it has been considered under two separate heads. The first relating to the inability of the rector, and of his assistant to discharge, without help, their respective duties; and the second respecting the division, disorder, and other mischiefs which have been produced by the publication of the rev. Mr. Jones's book, entitled, “ A Solemn Appeal to the Church.”

“ First head.—Owing to the severe affliction of the rector, it has appeared to the committee, as it has done to the rector himself, utterly impossible that he will again be able to perform his pastoral duties, they therefore recommend, in lieu of the house and compensation heretofore granted to the rector, that in future he be allowed a pension of five hundred pounds annually.

“ The rev. Dr. Beach, assistant to the rector, having signified to the vestry his desire, on account of his advanced age, to be assisted and relieved in the performance of his duties, the committee recommend, in lieu of the former compensation granted to Dr. Beach, that in future he be allowed a pension at the rate of seven hundred pounds an-

nually; and in case he keeps a house in town, that there moreover be allowed him three hundred pounds annually, to enable him to pay the rent thereof. On the subject of additional assistance to the clergy, the committee observe, that in the present embarrassment of the church, and whilst the proposal for the separation of St. George's and St. Paul's chapels remains undecided, it will, in their opinion, be expedient to defer any arrangement upon this subject.

"Second head. In respect to the disorderly state of Trinity Church and its chapels, proceeding from the misbehaviour before alluded to, of the rev. Mr. Jones, and which became the subject of the early animadversion of the vestry, the committee are constrained to declare, that in their opinion, the peace of the church cannot be re-established, so long as the connexion between the vestry and the rev. Mr. Jones remains undissolved.

"Two modes by which the connexion may be dissolved, have occurred to the committee:—*First*, from the nature and terms of the engagement between the vestry and the rev. Mr. Jones, there can be little doubt that the same may, for sufficient cause, at any time be dissolved by either party; it being presumed that the canons of the church do not affect contracts which had been previously made. *Second*, the thirty-second canon of the general convention of the year 1808, relates to disagreements between ministers and their congregations or vestries, and provides for the dissolution of the connexion between them. As the committee have expressed their opinion that the connexion with Mr. Jones ought to be dissolved, it remains for the vestry solemnly to consider and determine, whether a due regard for the peace and prosperity of the church, does not require of them, without delay, to have recourse to the means provided by the canons to effect this dissolution.

(Signed)

RUFUS KING,
RICHARD HARISON,
DAVID M. CLARKSON,
ANDREW RAYMOND."

Which report being read, and the first head thereof in relation to the state of the church being under consideration, it was

Resolved, that the provision recommended by the said committee be granted to the rector and assistant rector, to commence from the first of August last, and to be in lieu of the provision heretofore allowed them.

The second head of the said report, in relation to the state of the church, being under consideration, the vestry came to the following resolution:—

Whereas differences and controversies exist between the rev. Mr. Cave Jones, one of the assistant ministers of this church, and this vestry, arising out of the publication, entitled, “A Solemn Appeal to the Church,” which are of such a nature as cannot be settled between them.

Resolved therefore, that application representing the same be made on the part of this board to the bishop of the diocese, pursuant to the thirty-second canon of the general convention.

Thereupon resolved further, that the right reverend the bishop of the diocese be, and he hereby is humbly requested to take into immediate consideration the subject matter of the foregoing resolution, and with the assistance of his presbyters, to proceed therein, according to the direction of the said canon.

Resolved, that the clerk be directed to transmit a copy of the foregoing resolutions to the right reverend bishop Moore.

New-York, October 5th, 1811.

Whereas certain resolutions of the vestry of Trinity Church, in the city of New-York, have been transmitted to me, Benjamin Moore, D. D. bishop of the protestant episcopal church, in the state of New-York, which resolutions are in the words following, viz. “Whereas differences and controversies exist between the rev. Cave Jones, one of the assistant ministers of Trinity Church, and this vestry, arising out of the publication, entitled, “A Solemn Appeal to the Church,” which are of such a nature as cannot be settled between them,

Resolved therefore, that application respecting the same be made on the part of this board to the bishop of the diocese, pursuant to 32d canon of the general convention.

Therefore resolved further, that the right reverend the bishop of the diocese be, and he hereby is humbly requested to take into immediate consideration the subject matter of the foregoing resolution, and with the assistance of his presbyters, to proceed therein according to the directions of the said canon.

Resolved, that the clerk be directed to transmit a copy of the foregoing resolutions to the right reverend bishop Moore.

Extract from the Minutes.

T. L. OGDEN, Clerk.

And whereas a copy of the said resolutions was, on the 7th of September last, by me furnished to the said rev. Cave Jones, and thereupon the said Cave Jones presented to me a remonstrance against any proceedings being had against him under the said canon, upon the said application of the said vestry, as by a reference to the said remonstrance, a copy whereof is hereunto annexed, may appear; and whereas after a communication of the said remonstrance to the said vestry, the said vestry hath requested me to proceed under the said canon, and I having determined so to proceed, the said application appearing to me to be one that comes within the purview of the said canon. And whereas reasonable notice in writing has been served upon the said Cave Jones, on the 16th day of October, in the year of our Lord one thousand eight hundred and eleven, aforesaid, to appear before me and my presbyters on the 5th day of November, in the said year, at the hour of 12 o'clock, at No. 20 Robinson-street, to shew if any thing he has to say on his part in relation to the said application and case of controversy, at which time and place, we the said bishop and his presbyters, who have subscribed these presents, were duly assembled, and the said Cave Jones appeared, and was by us fully heard in relation to the said application and case of controversy, and thereupon we the said bishop and presbyters having advised together, it appears to us that the controversy between the rev. Cave Jones, one of the assistant ministers of Trinity Church, in the city of New-

York, and the vestry of said church, has proceeded such lengths as to preclude all hope of a favourable termination, and that a dissolution of the connection is indispensably necessary to restore the peace, and promote the prosperity of the church: Therefore, agreeably to the authority vested in us by the 32d canon of the general convention of the protestant episcopal church, we do recommend to the rev. Cave Jones, one of the assistant ministers of Trinity Church, New-York, to relinquish immediately his title to the said office of assistant minister on the following conditions, viz. that the vestry of said church pay the rev. Cave Jones the balance of his salary, which may be due on this day, and within thirty days thereafter, the sum of one thousand pounds. And should the said minister or vestry refuse to comply with the recommendation and conditions aforesaid, with the concurrence of my presbyters, the penalties of the canon aforesaid, with respect to the party or parties refusing, shall be carried into full effect. Witness our hands this 5th of November, 1811.

(Signed)

BENJ. MOORE, bishop of the
protestant episcopal church in
the state of New-York,

ISAAC WILKINS,

THEOD. BARTOW,

JOS. BOWDEN,

ES. COOPER,

DAVENPORT PHELPS,

JOSEPH PRENTICE,

JOHN REED,

N. BOWEN,

THO. LYELL,

JONATHAN JUDD,

SETH HART,

BARZILLAI BULKLEY,

THOMAS Y. HOW.

Resolved, that the clerk of this convocation is hereby ordered to deliver forthwith one of the foregoing instruments to the rev. Cave Jones, and another to the vestry of Trinity Church, and to require their answer in writing to the same,

addressed to the right reverend bishop Moore, at No. 20 Robinson-street, at or before 1 o'clock P. M. to-morrow, and to inform the parties respectively, that a failure to answer will be considered as a refusal, by the party so failing, to comply with the terms of the recommendation of the bishop and his presbyters.

Extract from the minutes of the proceedings
of the convocation.

(Signed) THO. LYELL, clerk.

*Extract from the minutes of the vestry of Trinity Church, at
a meeting had on the 12th December, 1811.*

The appointment of an assistant minister being under consideration, the following resolutions were adopted.

Resolved, that the assistant ministers employed by this corporation (other than the assistant rector) are considered as holding their offices during the pleasure of the vestry.

Resolved, that the vestry do now proceed to the appointment of an assistant minister to hold his office in conformity with the principle expressed in the foregoing resolution, and to be placed, in respect to salary, upon the footing of the other assistant ministers now employed by this corporation.

The assistant rector having nominated the rev. William Berrian as an assistant minister of this church,

Thereupon resolved, that the said nomination be approved, and that the clerk be directed to transmit to the rev. Mr. Berrian a copy of this and the two preceding resolutions.

9th April, 1812.

Upon the report of the committee on the state of the church, ordered, that a donation of six hundred pounds be granted to the right reverend bishop Hobart, the rev. Mr. How, and the rev. Mr. Berrian for the year commencing on the first day of June next, in aid of their stated salaries, and no donations having been granted for the last year, that an allowance equivalent to eleven hundred pounds per annum, be made good to them up to the said first day of June next, and also to the rev. Dr. Beach, up to the date of the existing arrangement between him and the vestry.

7th December, 1812.

Upon reading a letter addressed to the vestry by the rev. Mr. How, stating that by reason of extraordinary expences incurred by the removal of his family to this city, and by sickness, with which it has since been afflicted, he had contracted debts which he was unable to discharge without the aid of the vestry; it was resolved, that in consideration of these circumstances, the sum of five hundred dollars be now paid to the rev. Mr. How as a donation.

New-York, ss. JOHN CLARK, of the city of New-York, gentleman, a witness produced on the part of the defendants, being duly sworn, deposeth and saith, that he was a member of the vestry of Trinity Church when the plaintiff was called an assistant minister in that church, and continued so until April 1812, when the deponent ceased to be a member of the corporation of Trinity Church. The deponent knew the plaintiff before he left this city to go to the southward, which was several years before he was called to Trinity Church; after the plaintiff was so called, and had returned to the city of New-York, and within one year thereafter, he gave the deponent to understand, in conversation, that Dr. Hobart and he did not agree. The plaintiff did not charge Dr. Hobart with any thing in particular; but insinuated that Dr. Hobart was disposed to take too much upon himself; and the deponent thought, from all that passed between him and the plaintiff, that there was a jealousy on his part respecting Dr. Hobart. The plaintiff was in habits of intimacy in the family of the deponent, and used frequently to visit in it, shortly after his settlement in Trinity Church, and for several years thereafter, and until shortly before the publication of the plaintiff's book, and had frequent conversations with the deponent on the subject of Dr. Hobart, which were always introduced by the plaintiff, and all tended to convince the deponent that there was a jealousy on the part of the plaintiff towards Dr. Hobart. The deponent says, that Dr. Hobart, between the settlement of the plaintiff in

Trinity Church and the publication of his appeal, was also in the habit of visiting in the family of the deponent, but the deponent never heard Dr. Hobart, during that time, speak disrespectfully of the plaintiff, or insinuate any thing against him; but on the contrary, he always spoke of the plaintiff in a respectful and friendly manner. The plaintiff showed to the deponent a copy of a letter which he had written to Dr. Hobart. The deponent told the plaintiff that he thought that he, the plaintiff, had better be quiet; that his situation was a very comfortable one; that words were not blows; and that the difference between him and Dr. Hobart could be made up between themselves; and that the plaintiff replied, that he would proceed against Dr. Hobart as he, the plaintiff, had begun, in order to justify himself; and that shortly after, the book of the plaintiff appeared. The deponent thought, from all that passed at that time between the plaintiff and him, that it was his intention to bring about a public investigation of the conduct of Dr. Hobart in relation to him, the plaintiff. The plaintiff's book produced a controversy between him and the vestry of Trinity Church, which was not settled until after the proceedings against the plaintiff before the bishop and the presbyters. The publication of the plaintiff's book produced very great disturbance among the different congregations connected with Trinity Church, some taking side with the plaintiff and some against him; producing difference and contention in families; and in some instances between men and their wives; that these differences induced some to refuse to hear the plaintiff preach, and a few, comparatively, to refuse to hear Dr. Hobart. The deponent was in the vestry at the time a gratuity of five hundred dollars a year formerly made by Trinity Church to Dr. Harris was discontinued; that the last time that such gratuity was granted, it was the subject of considerable debate and diversity of opinion; that subsequent to that time, and previous to the discontinuance of it, Dr. Harris had been elected president of the college; and that this circumstance was given as the reason of the discontinuance in the vestry at the time, it being mentioned, that Dr. Harris's salary and perquisites, as

president, was equal or more than the gratuity he had received from Trinity Church.

The deponent, on being cross-examined, says, that what he means by saying that the publication of the plaintiff's book produced a controversy between him and the vestry, is, that the vestry were displeased with it. The deponent says that he knows from conversation with members of the committee, to whom the plaintiff's book was referred, immediately after their report, that it was intended to take further measures in the vestry against the plaintiff. Mr. Raymond was one of the members of the committee who mentioned this circumstance to the deponent. The deponent did not know, before the report of the committee, of which Mr. Raymond was a member, that it was intended to take any further steps against the plaintiff. It was proposed in the vestry to do so at the time that committee was appointed. The deponent believes that there was a proposition to that effect made in the vestry, and agreed to, before the report of the committee aforesaid; and in short, from the time the plaintiff's book first appeared. Until the reference to the bishop, there was always an intention in the vestry, as the deponent understood, to investigate the business. There is no circumstance, within the deponent's recollection, that enables him to fix the time of his first conversations with the plaintiff on the subject of Dr. Hobart to be within the first year of the plaintiff's settlement; but the deponent speaks of the time from his general recollection. The deponent was in the habit, at that time, of conversing freely with the plaintiff on the state of the church, which conversations were sometimes introduced by the deponent, and the remarks made by the plaintiff on Dr. Hobart usually grew out of such conversations. He thinks he is more distinct in his recollection of the time when these conversations were first had between the plaintiff and him, than he is of the circumstance that passed in the vestry respecting the plaintiff. He does not remember the time when the plaintiff was called, but it was the spring after Dr. Hobart, who was called the preceding fall.

New-York, ss. THOMAS GIBBONS, of the city of New-York, a witness on the part of the defendants, being duly sworn, deposeth and saith, that he was a delegate from St. Stephen's Church to the state convention which met at Poughkeepsie in 1805, went up on board of the same vessel with the plaintiff; and while on board, he heard a conversation among the clergy, at which Dr. Harris and Mr. Strebeck were present, respecting putting Dr. Hobart out of the office of secretary of the convention, and putting the plaintiff in his place: he does not remember whether the plaintiff was, or was not present at that conversation; he recollects that one of the clergy solicited his vote for the plaintiff; but who particularly he does not remember; who observed to the deponent, that the plaintiff had been kept back long enough; and that it was high time that he should be brought forward. Dr. Harris and Mr. Strebeck appeared to be on very intimate and friendly terms with the plaintiff; they were frequently in conversation together.

On being cross-examined, he says, that he did not get up to the convention, and he did not hear of any electioneering among the clergy, except what he heard on board the vessel, as before stated. The plaintiff, Mr. Strebeck, and others, left the vessel before she arrived at Poughkeepsie, and went up by land, as the deponent understood; and further he saith not,

New-York, ss. CORNELIUS SCHUYLER, of the city of New-York, a witness on the part of the defendants, being duly sworn, deposeth and saith, that he was for seven years, immediately preceding the present year, one of the church-wardens of St. Stephen's Church, in the city of New-York; he was a delegate to the state convention which met at Poughkeepsie in 1805; he went up the North River, in company with the plaintiff and Mr. Strebeck, to attend the convention, and heard a conversation between them, in which the plaintiff said, "why should Dr. Hobart be secretary all the time;" and further he saith not.

New-York, ss. JAMES GILLENDER of the city of New-York, a witness produced by the defendants, being duly

sworn, deposeth and saith that he attended the state convention of 1807, as a delegate from St. Stephen's Church in this city, and on the first day that convention met, the deponent was applied to by the rev. Mr. Strebeck, then rector of St. Stephen's Church aforesaid, to unite in a scheme to turn Dr. Hobart out of the office of secretary of the convention, and to put the plaintiff in that office; the deponent understood that this request was made by Mr. Strebeck with the concurrence of the plaintiff and his friends; and the influence of the deponent was asked as a favour to the plaintiff. The deponent says that Mr. Strebeck appeared active to bring about the aforesaid change, and had frequent conversations with the plaintiff in the church, immediately before the appointment of a secretary. Immediately after the resignation of Mr. Strebeck, as rector of St. Stephen's, which was in the spring of 1809, as he believes, the plaintiff applied to witness, he then being one of the vestry, to use his influence to get Dr. R. C. Moore appointed successor to Mr. Strebeck. The plaintiff was very solicitous for the immediate appointment of Dr. Moore; and upon the deponent's informing him that as he had no knowledge of Dr. Moore, he must be governed by information which he received of the plaintiff; and stating to plaintiff that his wish was to get a person, who was on a friendly footing with the clergy of Trinity Church, in order that they might have the advantage of frequent exchanges with them; the plaintiff observed, that Dr. Moore was on such footing; and that there was not probably a man in the United States who in that particular would suit them better; the deponent thereupon consented to use his influence, and did succeed in obtaining the appointment of Dr. Moore: in the course of two months thereafter, the deponent discovered that Dr. Moore was not on good terms with the clergy of Trinity Church, and after frequent conversations and remonstrances with Dr. Moore, the deponent discovered that there was no probability of any understanding or union taking place between him and the clergy of Trinity Church; he determined to decline a re-election in the vestry of St. Stephen's, and did so accordingly. He considered himself very much disappointed and aggrieved by the representations of the plaintiff

respecting the situation of Dr. Moore with the clergy of Trinity Church.

On being cross examined he says, that in 1807 he was slightly acquainted with the plaintiff, and that he never had any conversation with him on the subject of turning Dr. Hobart out of the office of secretary of the convention, does not recollect how many votes were given against Dr. Hobart at that election; does not think that the opposition was given up before they went into the ballot, but cannot say, whether or not. He says, that it is usual for the clergymen during the sitting of the convention, to have private conversations with each other; he thinks, that the conversations between the plaintiff and Mr. Strebeck before mentioned, were more frequent than is usual among clergymen in the convention. During the ministry of Mr. Strebeck, the deponent recollects to have had one conversation in company with one of the vestrymen of St. Stephen's Church with the plaintiff on the subject of the affairs of that church; he might have had other conversations on the same subject with the plaintiff, but he does not recollect. After Mr. Strebeck's resignation, and Dr. Moore's acceptance of the rectorship of St. Stephen's Church, but before Dr. Moore took possession, the plaintiff frequently officiated there. He does not remember that the plaintiff mentioned to him that Dr. Moore had a call to Baltimore, when he said that there was no time to be lost, but deponent recollects to have heard that fact stated after the call from St. Stephen's had been presented to Dr. Moore. Witness had understood and believes that there was a difference between Dr. Moore and some of the clergy of Trinity Church, before his removal from Staten Island, and has understood from Dr. Moore himself, that a difference subsisted before that time between him and Dr. Hobart. He has understood that the cause of difference between Dr. Moore and the clergy of Trinity Church, since Dr. Moore's removal to the city, was his interference with the concerns of other congregations and the mode of conducting his own; what he means by Dr. Moore's interference with congregations of other churches is, that he understood from Mr. Lyell, and he believes from most of the clergy of Trinity Church, that Dr.

Moore had had a meeting with the members of Christ's Church, at the house of a Mr. Scott, as he believes, and that on the next communion service in St. Stephen's very many of those persons attended; he had not heard that they had given a previous notice to Mr. Lyell, that they would withdraw from his congregation; he heard this from bishop Hobart and Mr. How also, and none others. The objection made to the mode of Dr. Moore's conducting the affairs of his own church, as the deponent understood, was his refusing to officiate in his own church on week-days, instead of attending society meetings at private houses, against which practice many of the vestry had remonstrated and deponent amongst the rest. Witness does not know that either of the aforesaid causes of complaint existed before Dr. Moore left Staten Island; there may have been similar complaints in the congregation of Staten Island, but witness knows nothing of it. The plaintiff requested Dr. Moore in the hearing of the deponent to discontinue the society meetings, when Dr. Moore said, that he would lay the matter fairly before the bishop, and that if he directed him to discontinue them he would, otherwise he would not, and that if any blame should attach, in consequence, the bishop must bear it. The deponent mentioned this circumstance to the bishop's brother, Dr. William Moore, and requested him to call on the bishop and inform him of the intended visit of Dr. R. C. Moore, and to put him on his guard, as the deponent apprehended that it was the intention of Dr. R. C. Moore to involve bishop Moore in difficulty, by throwing the blame of the prohibition on him. He says that St. Stephen's Church has prospered under the ministry of Dr. Moore, as much as the representation of the plaintiff would warrant, but that Dr. Moore's standing with the clergy of Trinity Church, was not such as was represented by the plaintiff. The congregation of St. Stephen's is very numerous, most of them have joined since the commencement of Dr. Moore's ministry.

On being re-examined by the defendants he says, that he understood one cause of complaint against Dr. Moore, on the part of the clergy of Trinity Church, was his not using the common prayer book at society meetings, and being in the

Habit of extemporary prayer on those occasions, which was disagreeable to a majority of his vestry at that time; and against the opinion of the plaintiff as deponent understood from the plaintiff himself, and further the deponent saith not.

New-York, ss. RICHARD KINGSLAND, of the city of New-York, a witness produced by the defendants, being duly sworn, and examined by Dr. How in the absence of the defendants' counsel—says, that he has from fifteen to twenty years last past been a regular attendant at St. Paul's church in New-York—that the publication of the plaintiff's book entitled "A Solemn Appeal," produced a very strong and general dissatisfaction among the members of that church, so much so, that many left the church when the plaintiff was to officiate there, and among them the deponent and his family. The deponent considered the plaintiff's usefulness after the publication of his book at an end, and his continuance in Trinity Church calculated to disturb the peace, and injure the prosperity of it; and he thinks that this was a very general opinion. He voted against Mr. Depeyster as a vestryman, and did so because he understood that Mr. Depeyster had supported the plaintiff, and endeavoured to uphold him in the church against the other part of the vestry, and the deponent believes others were influenced to leave Mr. Depeyster off for the same reason. The deponent thought the plaintiff's book was produced in consequence of disappointment; that its character was disgraceful, and its tendency injurious to the interests of the church. He says that Dr. Hobart did postpone a reply for a long time.

On being cross-examined, he says, that he does not know of any persons leaving the church when Dr. Hobart and Mr. How preached. Mr. How stopt at the deponent's door as he was going to a funeral, and said to deponent, that he had heard that deponent had said that Mr. Depeyster ought to be turned out of the vestry, to which deponent answered, that he thought not only Mr. Depeyster, but all the others who were in favour of the plaintiff, should be turned out. Mr. How replied no, that would be going too far; but the deponent does not know whether Mr. How meant that turn-

ing out Mr. Depeyster would be going too far. He obtained his information respecting the part Mr. Depeyster took in the vestry from public talk. He never had any conversation with Dr. Hobart or Mr. How on the subject. He got his ticket for vestrymen at Mr. Swords's—Mr. Depeyster's name was on it; he struck it out of several. The deponent does not know what his opinion respecting the plaintiff's book would have been, if the facts stated therein were true; he thought it impossible that they could be true:—and further he saith not.

New-York, ss. DANIEL KEMPER, of the city of New-York, a witness produced on the part of the defendants, being duly sworn, deposeth and saith, that he is now, and has been for many years last past a member of Trinity Church, in the city of New-York, and regularly attended worship in St. Paul's chapel; that a very general disapprobation and dissatisfaction was produced throughout the members of Trinity Church, by the publication of the plaintiff's book, entitled a "Solemn Appeal," which manifested itself by many declaring that they would not attend the plaintiff's preaching, and others refusing to receive the elements from him at the communion of the supper but passed on to the other officiating clergymen at the other side of the altar. The deponent thinks, that from the state of confusion and dissatisfaction existing in the church in consequence of the aforesaid publication, that the plaintiff's usefulness was at an end, and such he thinks was the opinion of the majority of the congregation. The reason of leaving Frederick Depeyster out of the vestry, was the violent part he took in the vestry in favour of the plaintiff;—he heard this assigned as a reason by many; and also his having charged the vestry with withholding a stipend from Dr. Harris, in consequence of the part which he had taken in favour of the plaintiff, which charge was believed to be unjust. The deponent considered it essential to the peace of the church, that the plaintiff should be separated from Trinity Church. On being cross-examined, he says that he had never heard of any difference among the clergy of Trinity Church, until a short time previous to the publication of the plaintiff's book;—he did hear that such book

was coming out; and he remembers to have heard at the time, a dissatisfaction expressed by different members of the congregation at the idea of any book appearing from the plaintiff on the subject. Those whom he heard express dissatisfaction with the plaintiff's book after it did appear, had read it, as he understood from them, and he the deponent had read it. The dissatisfaction was not only on account of the contents of the book, but that there should be any book on the subject. The deponent, and those persons to whom he has above alluded, thought it wrong for a clergyman under the circumstances in which the plaintiff was, to publish at all;—he would have thought it wrong if the charges contained in the book were true. He has read the two pamphlets on this subject, written by Dr. Hobart, one called a letter to the vestry of Trinity Church, and the other Dr. Hobart's statement. He heard no dissatisfaction expressed with the appearance of either of those pamphlets, and he was not dissatisfied with them. It was thought a matter of necessity for Dr. Hobart to publish, in order to justify himself against the charges made by the plaintiff, but the necessity was regretted. If the charges contained in the plaintiff's book were true, the deponent does not think that he was justified in publishing by the same necessity, nor by any other circumstance stated in his book, as the deponent always thought there was authority sufficient in the church to settle all controversies; and also thinks that there was sufficient authority in the church to settle any controversy growing out of the plaintiff's publication; and that Dr. Hobart and Mr. How ought to have resorted to that authority to settle any complaints they had against that publication. The deponent heard two or three of the congregation say, that they would not go to hear Dr. Hobart and Mr. How. He has heard some of the congregation express themselves friendly to the plaintiff. The deponent voted against Mr. Depeyster in the election for vestrymen in 1812—he got his ticket and a number of others at Mr. Swords's book-store; the tickets were printed, and Mr. Depeyster's name was on it;—he thinks that he struck it out. It was generally thought that there was not, under the existing circumstances, any means of preserving the peace of the church but by the se-

paration of the plaintiff. The deponent does not know what the effect would have been if one of the churches had been set apart for the plaintiff.

On being again examined by the defendants, (the questions being put by Dr. How, the only counsel on the part of the defendants being suddenly called away) the deponent says, that he thinks but a very few individuals of any one of the congregations of Trinity Church, if separated, would have been willing to take the plaintiff as their rector. The plaintiff's book, in reference to its contents, was considered by the deponent and many others, a disgraceful and shameful publication. Dr. Hobart and Mr. How postponed an answer a long while; and it was the opinion of many of the friends of the church that it had become expedient and proper for Dr. Hobart and Mr. How to take public notice of it. The deponent frequently heard the friends of the plaintiff say, that they could not answer the charges, and were afraid to take notice of the plaintiff's book. The deponent and many others, considered the publication of Dr. Hobart and Mr. How, in answer to the plaintiff's book, as a defensive act, and therefore justifiable; and their publication removed unpleasant impressions from the minds of many persons in the church, who from a want of knowledge of the parties, and proper information on the subject of dispute, were in a state of uneasiness, and it had the same favourable effect on the minds of many others of other denominations. When he said in his cross-examination, that he thought Dr. Hobart and Mr. How should have applied to the authority of the church, he meant, that the whole dispute ought to have been decided by the church. The deponent thinks that the publication of the plaintiff's book required that he should be brought to a public trial, before the authority of the church.

The deponent being again examined on the part of the plaintiff, says, that the doubts before stated to have been removed by the publication of Dr. Hobart and Mr. How's pamphlet, was in consequence of the deponent and the others before referred to, believing that the facts therein stated, were true. The facts stated by the plaintiff in his pamphlet were not credited. He never made any inquiry respecting the facts

stated in either of the publications; but from general conversations with members of the church, he drew his conclusions respecting them. He considers both of the pamphlets of Dr. Hobart herein before mentioned, as defensive measures. His sister, Mrs. Morton, of the presbyterian church, and George Harsin, of the Dutch church, are two of the persons referred to by him, as belonging to other denominations, in whose minds favourable impressions were made by the publication of Dr. Hobart's and Mr. How's pamphlet. There were others, but he cannot recollect their names; and being asked to endeavour to recollect the name of one other, he says he cannot. Mr. Harsin said, that since he had read those publications, the impression made by the plaintiff's pamphlet was in a good measure done away.

The deponent being again examined on the part of the defendants, says, that from what he has heard, and from general report, he is of opinion that those pamphlets had a very general and happy effect on the minds of people of other denominations. The deponent considered many of the most important facts stated in Dr. Hobart's letter to the vestry as proved by documents accompanying it;—and further he saith not.

New-York, ss. HENRY ROGERS, of the city of New-York, a witness produced on the part of the defendants, being duly sworn, deposeth and saith, he is a member of the episcopal church in this city, and was so when the plaintiff's book, entitled "A Solemn Appeal," was published; it produced a very great sensation among the members of the church, as far as deponent's observation extended, which was pretty general; and it was supposed by deponent, and most of those with whom he conversed belonging to the church, that a separation was indispensable between the plaintiff and Trinity Church. He thinks there were many who had strong objections to attend the ministrations of the plaintiff after the publication of his book; and that he heard several say, that they would leave the church if they saw the plaintiff officiating. He thinks that the continuance of the plaintiff in Trin-

ity Church, after the publication of his book, would have proved ruinous to the peace of the church.

On being cross examined, he says, that he attends public worship at Grace Church, and did so when the plaintiff's book was published, and has ever since. Grace Church is not connected with Trinity, but is separate and distinct. The sensation he has before spoken of as existing among the members of Trinity Church, was a conviction on their minds that there could not be any longer harmony between the clergy and the plaintiff after the publication of his book. The deponent says, that as far as he is informed, the opinions of the persons to whom he has before referred, were formed independent of the consideration whether the facts stated by the plaintiff were true or false, as they considered the facts trifling in themselves, and that they had been treasured up by the plaintiff to be made use of as he should find occasion. Perhaps he may have heard one or two of the members of Trinity Church say, that they would not attend the ministrations of Dr. Hobart; and it may be also that Mr. How was included, but he cannot be precise or certain. He thinks he has heard Mrs. Hoffman, Mrs. Startin, N. Rogers and his wife, Mr. Swords, Mr. Kemper, Mr. Underhill, and a great number of others, whom he is not able to mention by name, say that they would not attend upon the ministrations of the plaintiff; he says that he is not absolutely certain that he heard any one of those he had named refuse to attend the ministration of the plaintiff, but such is his impression. The opinion of the deponent respecting the tendency or effect of the plaintiff's publication, does not depend upon the truth or falsehood of the facts contained in it, but that it was calculated to break up the peace and harmony of the church; as he thinks the members of the church could not associate with one who treasured up what was said in private conversation for the purpose of publishing it; and he has heard this opinion expressed by many belonging to Trinity Church. The deponent says, that he has had repeated conversations with Mr. How on the subject of the plaintiff; he has heard him use very strong expressions as applied to the conduct of the plaintiff; and he thinks he has heard Mr. How say, that the

plaintiff had behaved in this transaction, as a rascal or a scoundrel, or some equivalent expressions; and he has heard others speak of the conduct of the plaintiff in terms of strong indignation—but does not recollect any other who made use of the same, or equivalent terms to those above mentioned; and that he never heard a clergyman speak of the aforesaid conduct of the plaintiff, but in terms of strong indignation. The clergymen whom he has heard speak on this subject, and to whom he refers, are Mr. Bowen, bishop Hobart, Mr. Berrian, Mr. Lyell, and he thinks Dr. Bowden. Soon after the appearance of the plaintiff's book, the deponent had a conversation with Dr. Beach respecting the plaintiff's book, and observed, that he thought that the plaintiff's book would break up the peace of the church; and that the plaintiff ought not afterwards to be permitted to go into the church, meaning thereby to officiate as a minister; to which Dr. Beach replied, that he disapproved of the plaintiff's publication as much as deponent did. He cannot be particular as to the times when he had conversations with any of the aforesaid gentlemen on the subject of the plaintiff's book, but he thinks it probable that he did converse with some, or all of them, within three months after the publication.

Being again examined by the defendants, he says, that Mr. How was very intimate in the family of deponent, and was in the habit of unreserved communication, which deponent always considered as confidential. And further he saith not.

New-York, ss. ALEXANDER OGSBURY, of the city of New-York, a witness produced by the defendants, being duly sworn, deposeth and saith, that he has been a member of 'Trinity Church for upwards of fifty years. The publication of the plaintiff's book, entitled, "A Solemn Appeal," created great difference and disturbance among the members of that church immediately after its appearance; and that as for himself, he could not either sleep or eat; and he could not hear the plaintiff preach with the same composure or satisfaction that he had formerly done; and he knows that a similar effect was produced on the minds of others; he has

frequently heard the enquiry made on his way to St. Paul's, where he usually attends, whether the plaintiff was to preach there; and has known several, at different times, when the plaintiff was to preach in St. Paul's, leave that church and go to other churches; deponent himself did not and could not take the sacrament when the plaintiff officiated, and he knows that this was the case with several others. The deponent thought it necessary for the peace of that church, that the plaintiff should be separated from it.

On being cross-examined, the deponent says, that on the 25th of the present month he will be seventy-seven years of age. Among the persons referred to by him, as refusing to attend upon the ministration of the plaintiff, he recollects the widow Mann and his wife; he cannot remember the names of any others; he has heard several enquire whether the plaintiff was to preach, whose names he never did know. The influence produced on the mind of the deponent, and as far as he knows, on the minds of others, by the plaintiff's book, did not depend upon the truth or falsehood of the statement, but from the circumstance of its being calculated and designed, as deponent believed, to produce confusion in the church. He says, that bishop Hobart and Dr. How had some slight conversations with him, at his own house, on the subject of the plaintiff's book, shortly after it appeared, which he thinks were produced by his the deponent's complaining of it; and these gentlemen used to observe that the subject was disagreeable, and it was dropped. He never heard any members of the church express dissatisfaction with bishop Hobart and Dr. How. The deponent has heard Benjamin Haight, who worshipped at St. Paul's, find fault with bishop Hobart and Dr. How on account of their conduct to the plaintiff, but he cannot remember the particulars. He has heard Mr. Halsted also find fault with bishop Hobart and Dr. How; he has heard Mr. Groshon, Mr. Shepherd, and Mr. Ashfield, whom the deponent understood were the friends of the plaintiff, and who belong to St. Paul's, in conversation together, in the portico of St. Paul's, on the subject of the plaintiff's dispute; but, when he saw that set together, he never went near them, and cannot say what

was said by them; the several persons above named were brought to the recollection of the deponent by being particularly named by the plaintiff's counsel; further he saith not.

New-York, ss. JAMES SWORDS, of the city of New-York, a witness produced on the part of the defendants, being duly sworn, deposeth and saith, that he has been a member of Trinity Church, in the city of New-York, since the year 1806; he has been for many years past in habits of intimacy with Dr. Hobart, and for several years before the appearance of the plaintiff's book, entitled, "A Solemn Appeal," with him; but not to the same degree. Previous to the publication of the plaintiff's book, Dr. Hobart always spoke of the plaintiff in friendly and respectful terms, and continued to do so for some time after deponent discovered, from the conversation of the plaintiff, that he entertained unfriendly feelings towards Dr. Hobart. Early in the fall of 1808, the plaintiff came to the store of the deponent, in company with the rev. Mr. Joab G. Cooper, and enquired for some pamphlets, which he said were directed to be printed by the protestant episcopal society for the promotion of religion and learning. After deponent gave the plaintiff as particular account concerning them as he could, the plaintiff asked him to refer to the leger, which deponent showed to the plaintiff; and after looking at it, he enquired by whose order certain articles were delivered. Deponent answered, that some were delivered by order of bishop Moore, some by order of Dr. Hobart, and some by others not recollected. The plaintiff pressed the deponent to be more particular; when he told the plaintiff that he would endeavour to recollect, and look up the orders. The plaintiff requested to be furnished with a copy, from the leger, of the pamphlets delivered, and turned round to Mr. Cooper and observed, it is all Dr. Hobart—repeating the same expression, and added, you see how it is; it must all be done as Dr. Hobart directs: from which expressions, and the manner in which they were uttered, the deponent was convinced that there were unfriendly feelings entertained on the part of the plaintiff to-

wards Dr. Hobart. This was the first time that the deponent observed it; but he had before heard it as matter of report, without crediting it. The deponent had a conversation with the plaintiff, in the store of the deponent, shortly before the publication of the "Solemn Appeal," when he asked for a certified copy of the account before mentioned; at the same time asking deponent whether he could not say that they were all delivered by the order of Dr. Hobart; to which deponent answered, with some warmth, that he could not say any such thing, conceiving it to be an attempt on the part of the plaintiff to enlist deponent on his side in the controversy between him and Dr. Hobart. The plaintiff then asked for such certified copy of the account as deponent could give, which deponent promised to give. The plaintiff said, to be candid, he must tell deponent what use he intended to make of the copy, and observed, that there was a certain pamphlet ordered to be printed, which never was done; and that the money had been misapplied; that Dr. Hobart and Mr. How were leagued together, and that every thing must be done as they directed. This young man (meaning, as deponent understood, Dr. Hobart) is aiming at the top of the ladder, and we must do what we can to pull him down, and show him in his true colours. If he is elected to the episcopate, we shall have such a scene of tyranny exercised in the church as has not been seen since the days of arch-bishop Laud. The deponent at that time had not mentioned to Dr. Hobart that the plaintiff had previously asked for a copy of the account of the pamphlets, as before stated. The deponent says, that the publication of the plaintiff's book had the effect among the members of Trinity Church to produce extreme displeasure in the minds of some against the plaintiff, and in the minds of others, settled hostility against Dr. Hobart and Mr. How. By far the greater part of the congregation took part against the plaintiff. Soon after the appearance of the plaintiff's book, the congregation began to divide on the subject of it, and a state of confusion ensued. A good many of the congregation avoided the church when the plaintiff officiated; and there were others who did attend, to whom the plaintiff's presence was evidently disagreeable.

He has understood that some of the congregation declined attending the ministrations of Dr. Hobart and Mr. How. A few days before the publication of the plaintiff's book, deponent dissuaded the plaintiff from publishing it, and informed him that the deponent had heard some of the congregation say, that they would not speak to him if he did; to which the plaintiff replied, that if they would treat him so unhandsomely, he could not help it; and that he had weighed every consequence, and was ready to meet it. The deponent says, that in July, 1811, he had a conversation with the plaintiff, and observed to him, that he, the deponent, was extremely sorry for the mischief and schism that had arisen in the church, and that he was very sorry that the plaintiff had not taken the advice of his friends, and not have published his book; to which plaintiff replied, that he was not sorry at all at having published; that whatever mischief and schism had arisen was chargeable to Dr. Hobart. The deponent has always esteemed Dr. Hobart as a very mild and unassuming man, and has never observed any thing in his character that could be termed overbearing or tyrannical; and as far as deponent's observation extends, he thinks he possesses the confidence and affections of the congregation in an unexampled degree.

On being cross-examined, he says, that the account of the pamphlets, published in the "Solemn Appeal," he believes to be a correct copy of that furnished by deponent. Dr. Hobart's letter to the vestry, and his statement, were printed in the office of deponent, from the manuscripts which he received from Dr. Hobart, except the statement by Mr. How, annexed to the letter of the vestry; the manuscript of which was received from Mr. How. Deponent's firm has of late years done all the printing for the corporation of Trinity Church. He says that bishop Hobart and Mr. How have frequently conversed with him since the publication of the plaintiff's book, concerning the plaintiff and the matters of the existing controversy, and has heard bishop Hobart ascribe the plaintiff's hostility to him, to jealousy: he thinks he has heard Mr. How say, the plaintiff was a mean trifling fellow, or a dirty fellow; and may have heard him, but is not cer-

tain, say the plaintiff was a scoundrel. The conversations before referred to were shortly after the publication of the plaintiff's book, and occasionally throughout the following summer.

On being again examined on the part of the defendants, he says, that the circulation of Dr. Hobart's letter to the vestry was, in the first instance, confined to the members of the vestry and to a few individuals, named by bishop Hobart. When Dr. Hobart was going out of town, which was on the same day, as the deponent believes, that the pamphlet was completed, he authorized deponent to give it to such churchmen as might enquire for it, keeping a list of their names, marking the pamphlet private, and requesting those to whom he should give it to return it when they had read it. There were three hundred of the letter to the vestry printed, but only one hundred and fifty were ordered by bishop Hobart; none of them were sold, but nearly all distributed. There were seven or eight hundred of Mr. How's appendix printed, but he thinks no particular number were ordered by Mr. How; and bishop Hobart found great fault with the extent of the impression. A second edition of bishop Hobart's letter to the vestry was published by Sargeant, a bookseller, a very short time after the appearance of the first, and as the deponent believes, without bishop Hobart's concurrence or privity. Mr. Sargeant had applied for a copy at the store of the deponent, and being refused, he said he would publish it; as the copyright was not secured, he would take the responsibility. Deponent, before the pamphlet was wholly printed, observed to bishop Hobart, that the call for it would be so great, that some person would reprint it, unless the copyright was secured. Bishop Hobart said, that that could not be, as it would be making a publication of it, and did not apprehend that any one would think it worth while to republish it. Deponent thinks that as many as four-fifths of the congregation of St. Paul's Church were desirous that the plaintiff should be separated from Trinity Church, at the time measures were taken by the vestry for that purpose: this opinion is not founded on actual calculation, but from his general acquaintance with the congregation.

Being again examined on the part of the plaintiff, he says, that he thinks about a dozen of the letters to the vestry, distributed by deponent as aforesaid, were returned.

Being again examined on the part of the defendants, he says, that he thinks he has heard bishop Hobart urged three or four times, but by whom he cannot say, to publish an answer to the plaintiff's book, as essential to the vindication of his character; and further he saith not.

The deponent appearing again the day following, and wishing to explain what he has before said in relation to the epithets applied by Dr. How to the plaintiff, says, that he cannot undertake to say that Dr. How either did, or did not make use of the term scoundrel; the deponent has heard a number of respectable persons apply that term to the plaintiff in relation to his book.

The deponent says that he recollects the names of a number of individuals belonging to 'Trinity Church,' who expressed their disapprobation of the conduct of the plaintiff, and their wish that he might be separated from that church, and who also expressed an unwillingness to attend on his ministration.

The deponent on being again cross-examined, says, that he has conversed with Dr. How in relation to the testimony he gave yesterday; he first mentioned to Dr. How, that he had doubts in his own mind, whether what he said in relation to the terms used by Dr. How in reference to the plaintiff was not too strongly expressed. He says, that yesterday, after his examination was closed, he expressed some surprise to Dr. How that the deponent had not been interrogated, as to the names of persons who were dissatisfied with the plaintiff. Dr. How suggested to the deponent that he had better attend this day, as he possibly might be wanted. He says that he cannot remember the name of any of the persons whom he has heard call the plaintiff scoundrel; having heard so much on the subject, that his memory is very indistinct as to what was said by particular individuals; he thinks he has heard from five to twelve apply that epithet to the plaintiff, and he thinks it possible that some were members in communion. He says that tickets for the election of vestrymen

in 1812 were printed at deponent's office. F. Depeyster's name was on it; he knows that his name was struck out by several. Bishop Hobart was at the store of deponent a day or two before that election, where there were several gentlemen, who said, that Mr. Depeyster should be left out, and that they would do what they could to keep him out. Bishop Hobart observed to them, that that would be wrong, that it was not his wish that Mr. Depeyster should get in with a full vote, but he wished him by all means to be retained in the vestry; and made use of arguments to dissuade the persons present from turning him out. The deponent says, that he never knew a contested election for vestrymen in Trinity Church but once before 1812, and it has been usual for only a very few votes to be taken; he has been told by a vestryman, that it was sometimes necessary for them to vote themselves in. In 1812 there was an opposition ticket published, and the members of the church invited to come to the election and support it. The tickets were printed, and Mr. Depeyster's name was upon it. Deponent, previous to that election, heard threats used; that bishop Hobart and Dr. How would not be in that church in a twelve month.

On cross-examination he says, that he heard such threats used by about three persons: Thomas Hamersley was one of them, and he thinks that Israel Purdy was another; and he cannot at present recollect the name of any other. Deponent thought that the persons who made the above threat were at the time in too warm a temper.

New-York, ss. EDWARD W. LAIGHT, of the city of New-York, a witness produced by the defendants being duly sworn, and examined by Dr. How, in the absence of the counsel, says, that he was one of the vestry of Trinity Church in 1811, when Mr. F. Depeyster moved that the sum of 500 dollars should be continued to Dr. Harris; the deponent did not know before that time, that such allowance had been made. Objections were openly and publicly made against that motion, stating that Dr. Harris was then in receipt of the same sum from the college, and that the former donation was given in order to indemnify him for relinquishing his school. The deponent requested Mr. Depeyster to withdraw his mo-

tion, and supposed that he would have done so; but the question being called for, the motion was put and lost. The deponent voted against it, for the reasons before mentioned. The deponent was a member of the vestry, when the plaintiff's book appeared, and was a member of the first committee appointed on that subject; whose report was a decided disapprobation of that publication. The deponent says, that it was the opinion of the aforesaid committee, as he understood and believes, that it was incumbent on the plaintiff, after they had made their report, to stop the further publication of his book, acknowledge the impropriety of its publication, or something tantamount thereto. He does not know of any understanding in the vestry, that the aforesaid report was to be final and conclusive, or that the matter was to rest there; but on the contrary, he thought that the subsequent conduct of the vestry would entirely depend on the conduct of Mr. Jones, and on the circumstances growing out of the transaction. The deponent understood that shortly after the report aforesaid was made, considerable ferment was produced in the congregations connected with Trinity Church, in consequence of the plaintiff's book; he heard of several who refused to hear plaintiff preach, but does not recollect particularly who they were. The deponent remembers that a subsequent committee was appointed in consequence of the disturbed state of the church, produced by the plaintiff's book, to whom the state of the church generally was referred. He has no knowledge of any such committee having been before appointed, but he was only one year in the vestry; when the vestry determined on a dissolution of their connexion with the plaintiff, the deponent thought such measure essential to the peace of the church.

On being cross-examined, says, that he has no reason to believe that the part which Dr. Harris took in the affair of Mr. Jones, had any influence on the vestry, in withholding the 500 dollars. He does not know, that it ever was intimated to the plaintiff, that the suppression of his book, and acknowledgment of the impropriety of publishing it, would be satisfactory. The report of the committee was communicated to the plaintiff, and he has no recollection of any other com-

munication from the vestry to the plaintiff. There never was any other attempt on the part of the vestry to effect a reconciliation with the plaintiff, except the aforesaid report of the committee, which gave plaintiff an opportunity to come forward. It was expected that he should take the first steps, as he was considered in the wrong. The deponent never heard in the vestry, that the plaintiff had suppressed his book; or had made any acknowledgment. He recollects that the vestry received a letter from the plaintiff, which was not considered satisfactory. He has heard that some persons refused to hear Dr. Hobart and Mr. How preach; but whether he heard of any such, before the appearance of Dr. Hobart's letter to the vestry of Trinity Church or not, he cannot say. The deponent says, that he would have considered the plaintiff in the wrong for publishing, whether the charges were true or not; because the publication of disputes among clergymen, begets irreverence towards their profession, and like family quarrels should not be made public. He thinks, that the pamphlets written by Dr. Hobart and Mr. How were justifiable as a reply, and in vindication of their character from the charges made by the plaintiff in his book; but he thinks they would not have been justifiable in the first instance. The deponent thinks that if the plaintiff's character had been assailed by Dr. Hobart and Mr. How in the way stated by the plaintiff in his book, that it did not justify his publication, but an extreme case might be put of a parol slander, which would justify in the opinion of the deponent a reply in print. The deponent does not think, that the suspicions of an individual respecting the intrigues of another for an important office in the church, would justify a publication; but that if important facts of such a nature were known, which could not otherwise be communicated to those who had to act in such case, the good of the church might justify a publication.

On being again examined by the defendants, he says, that he thinks that soon after the report of the committee before mentioned, if proper steps had been taken by the plaintiff, that he might have been retained in Trinity Church, consistent with the prosperity thereof; but that after the passions of the congregation became enlisted, he thinks that he

could not have been so retained; and the deponent says he is not a vestryman, or one of the congregation of Trinity Church. And further the deponent saith not.

New-York, ss. JOSEPH PRENTISS, of Athens, in the county of Greene, in the state of New-York, rector of Trinity Church at Athens aforesaid, being examined as a witness in this cause on the part of the defendants, (by consent of the plaintiff's counsel) doth depose and say, that some time in the summer or autumn of the year one thousand eight hundred and eight, as nearly as the deponent can recollect, the rev. Cave Jones, the plaintiff above named, called on this deponent at Athens, his place of residence, at which place and in the neighbourhood he remained some days, and preached at Athens and in the neighbouring parishes; after which this deponent went in company with Mr. Jones from Athens to Albany, riding together in the same carriage; during which ride from Athens to Albany, the conversation between Mr. Jones and the deponent turned upon a letter which had been addressed to this deponent by Mr. Jones, under the date of the ninth of August, one thousand eight hundred and eight, and which is published in the plaintiff's "Solemn Appeal," and upon the state of the episcopal church in the city of New-York and the ministers there settled, or some of them—whereupon Mr. Jones took occasion to observe on the character and conduct of Dr. Hobart, and to represent him in an unfavourable light to the deponent; the particular words or expressions used by Mr. Jones, or at least many of them, this deponent does not now recollect, and cannot therefore repeat, but they were calculated to induce the deponent to believe that Dr. Hobart was a hasty, ambitious, and ill-bred man, unworthy of the ministerial office, and undeserving of the confidence of the other clergy of the same connection. And in fact, as this deponent could not then altogether withhold his belief in the truth and accuracy of Mr. Jones, this deponent from the said conversation and the aforesaid letter, was led to suspect that Dr. Hobart had been guilty of the embezzlement of public money intrusted to him for a special purpose, or had employed the same to the purchase of his own contro-

versial writings, which was not the purpose to which it was intended to be applied.

And this deponent further saith, that in the course of some or one of the conversations which took place between this deponent and Mr. Jones, the plaintiff during his stay at Athens aforesaid, or the ride from there to Albany, Mr. Jones observed to this deponent in substance, or to the effect following, that if bishop Moore should drop off within a few years, Dr. Beach would undoubtedly, or probably, come forward with his claims to be bishop, but that he was wholly unfit for the office and ought not to be elected; and Mr. Jones added observations very disrespectful to Dr. Beach at the same time or times.

And this deponent further saith, ever since this deponent became acquainted with bishop Moore, which was as early as 1806 or 1807, he, bishop Moore, has been considered as the sole diocesan, and as far as the deponent knows, or ever understood, been obeyed as such, until the controversy with Mr. Jones took place. And this deponent further saith, that in the course of the conversations, which he has before related, with Mr. Jones, and in which Mr. Jones made the observations unfavourable to Dr. Hobart's character, Mr. Jones proposed that Dr. Hobart should be removed from or left out of the office of secretary of the state convention, and requested the deponent, in case he approved of the measure, to prepare the mind of the rev. John Reed, then of Catskill, for it. And this deponent further saith, that he believes the observations before alluded to, made by Mr. Jones, unfriendly to Dr. Hobart's character, were intended, among other things, to induce the deponent to join in the measure of turning, or leaving Dr. Hobart out of the said office of secretary. And this deponent further saith, that in all the conversations he has held with Dr. Hobart, or which he has heard Dr. Hobart have respecting Mr. Jones, prior to the publication of his "Appeal," he never heard Dr. Hobart express himself in a harsh or unfriendly manner of Mr. Jones, but on the contrary, all the conversations of Dr. Hobart, which have come to the knowledge of this deponent, res-

pecting Mr. Jones, have been respectful and friendly, prior to the publication of his "Appeal."

Deponent being cross-examined on the part of the plaintiff, says, he cannot recollect the particular expressions used by Mr. Jones, nor the particular circumstances stated by him, which were calculated to induce this deponent to believe that Dr. Hobart was a hasty, ambitious, and ill-bred man, unworthy of the ministerial office, and undeserving of the confidence of the other clergy of the same connection, except that Mr. Jones stated to him some conversation which he said had taken place between him and Dr. Hobart, at some funeral, in which he represented Dr. Hobart's conduct on that occasion as being very indecorous; and that he had frequently fallen into a violent passion, and used unbecoming and improper language. The idea of his being an ambitious man, arose in the deponent's mind, among other things, from Mr. Jones's representing him as acting in the capacity of a member of the standing committee, always in favour of, or using partiality to those who were or would be favourable to his views, and against those who would not. One other thing which gave this deponent the idea of Dr. Hobart's being ambitious, was, that his hostility to a Mr. Macklin, who had been in this country, was attributed to that trait in his character; and his jealousy that Mr. Macklin, if accredited, would not be subservient to his views. And deponent concluded that Dr. Hobart had appropriated the monies of the church, designed for other purposes, to the purchase of his own controversial writings, as he understood Mr. Jones, in order to exalt himself, and make himself of more consequence in the church; and Mr. Jones imputed the publishing of a Collection of Essays, by Dr. Hobart, to that motive. Has no further recollection of any other circumstance mentioned of his ambition. Deponent considered the expression in Mr. Jones's letter, above referred to, of Dr. Hobart's applying the monies of the church in the way which best suited his own wishes and views, as evidence of want of integrity, and one of the grounds forming a disqualification for the ministerial office, as well as the other things

already by him stated. Deponent does not recollect any other specific charges made by Mr. Jones against Dr. Hobart. Deponent does not mean to represent the expression, in his direct examination, "unworthy of the ministerial office," as having been used by Mr. Jones, but as the inference of his own mind from what Mr. Jones did communicate. Mr. Jones did not make any charge against Dr. Hobart of the embezzlement of public money entrusted to him, but this deponent was led to suspect the same, and it was an inference of his own mind from the expression in the before mentioned letter, and from the circumstances already stated; but this deponent does not now believe that Mr. Jones then intended to charge Dr. Hobart with such embezzlement. In respect to that part of the conversation testified to in deponent's direct examination, which related to the unfitness of Dr. Beach for the office of bishop, deponent does not recollect any other objections specified, except his disposition to indolence, that he would be led by the nose by Dr. Hobart and Mr. Lyell, and that his want of talent in writing was not suited for a bishop.

New-York, ss. BARZILLAI BULKLEY, of Flushing, in the county of Queens, a witness produced on the part of the defendants, being duly sworn, deposeth and saith, that he has been settled as an episcopal clergyman in the diocese of New-York, since the year 1806, and is now rector of St. George's Church in Flushing. He became acquainted with the plaintiff and Dr. Hobart soon after he settled in the diocese, and has been quite intimate with Dr. Hobart almost ever since. Until the fall of 1808, he always heard Dr. Hobart speak in very respectful terms of the plaintiff. When the deponent came to attend the convention in that year, he informed Dr. Hobart, that the plaintiff in conversation with the deponent, a short time previous, had said, that he, Dr. Hobart, had drawn up a number of charges against Mr. Feltus, which he did not believe he would be able to substantiate; and that the plaintiff had enquired of deponent whether he had not received from Dr. Hobart certain religious tracts; and censured him for not having sent them, saying

that it was his duty to have done so as secretary of the convention; and that the plaintiff had observed to deponent, that he thought he, Dr. Hobart, was pursuing a system of favouritism. And the deponent at the same time informed Dr. Hobart, that the general tendency of the remarks made by the plaintiff, was to depreciate him, Dr. Hobart, in the opinion of the deponent. Upon the deponent's informing Dr. Hobart of the purport of the observations which had been made by the plaintiff respecting him as aforesaid, he appeared to be very much dejected and distressed, and observed, that he could say of himself as the Psalmist said of himself—"Oh that I had wings like a dove, then I could fly away and be at rest." The deponent heard Dr. Hobart observe, in the winter of 1809, that if he was to study his own ease, he would retire to avoid the collisions and difficulties which he foresaw would arise, but that he owed it to his ordination vows to continue in the service of the church.

On being cross-examined, the deponent saith, that the communication which he made to Dr. Hobart of the observations of the plaintiff concerning him, were made in Dr. Hobart's study. The certificate signed by the deponent, and published in Dr. Hobart's letter to the vestry of Trinity Church, page 33, was given by him to Dr. Hobart soon after the appearance of the "Solemn Appeal." The deponent wrote the certificate in the form in which it is published, and it was published with his consent. The deponent says, that previous to the conversation before referred to, between Dr. Hobart and him, in which he informed Dr. Hobart of the observations made by the plaintiff as before stated, the deponent being at Dr. Hobart's house, in company with Mr. How, hinted first to him the purport of plaintiff's observations concerning Dr. Hobart; and Mr. How, with the consent of the deponent, informed Dr. Hobart, as deponent understood; upon which Dr. Hobart joined the deponent in the study, and on making enquiry, the deponent made the communication aforesaid to him. He was present at the meeting of bishop Moore and his presbyters, on 5th November, 1811. He does not remember to have heard of a convocation in October, 1811. He does not recollect being present

at any meeting of the bishop or assistant bishop and presbyters, between the sitting of the convention in May, 1811, and that of the 5th November in that year, or hearing of any such, until he saw a pamphlet of the plaintiff's, in which a caucus of the clergy is spoken of.

Being again examined by the defendants, the deponent says, that Dr. Hobart, in the course of the conversation between him and the deponent, before referred to, spoke of resigning the office of secretary of the convention, in favour of the plaintiff; and asked deponent whether he thought that would pacify him; to which deponent replied, that the experiment might be tried. And further he saith not.

New-York, ss. WILLIAM E. WYATT, of Newtown, Long-Island, aged 24 years, a minister of the gospel, in the protestant episcopal church, being duly sworn, saith, that he was a student of divinity in the city of New-York, in the year 1809 and 1810, and in habits of intimacy with the rev. Dr. Hobart, rev. Dr. How, and Mr. Jones;—that during this intimacy he never knew Dr. Hobart or Dr. How to endeavour directly or indirectly to diminish his regard for Mr. Jones;—that until the existence of the dissensions between those gentlemen became generally known, he never heard either Dr. Hobart or Dr. How speak otherwise than respectfully of Mr. Jones;—that in his intercourse with Mr. Jones, he was frequently displeased with the tendency of Mr. Jones's remarks, which appeared designed to depreciate doctors Hobart and How, and those gentlemen who were known to be most friendly to them, in his esteem, that he at last relinquished his visits to Mr. Jones, solely on this account, and that he resolved to do so, and informed a friend of his design, before he had conversed with any person on the subject of the controversy existing between Dr. Hobart and Mr. Jones—that he was impressed by Mr. Jones's frequent remarks derogatory to Dr. How and Dr. Hobart, with the opinion that Mr. Jones was of an envious disposition, and jealous of the greater popularity of the other gentlemen—that at the time he proposed to enter systematically upon the study of theology, he was desirous of being under the direction of Dr.

How, but that Dr. Hobart and Dr. How urged him to study under the direction of doctors Hobart and How, and Mr. Jones, unitedly; that this was repeatedly recommended by the former two gentlemen, so as to impress him with a belief that they much wished it; and that the plan was relinquished solely in consequence of the deponent's aversion from it;—and that having belonged to the Theological Society during the time that Dr. Montross was also a member of the same, he recollects that his impressions, arising from the character of Dr. Montross's performances there, were unfavourable to said Dr. Montross, in regard to his talents and manners.

On cross-examination, he says, that the deponent cannot recollect any of the remarks which Mr. Jones made, which induced his belief that Mr. Jones was unfavourably disposed to Dr. Hobart and Mr. How, it being between three and five years since the conversation with Mr. Jones to which the deponent refers. These remarks, relating to the subject of Mr. Jones, was the subject of conversation between the deponent and Mr. Kemper, who visited Mr. Jones with the deponent.

New-York, ss. THOMAS LYELL, rector of Christ Church in the city of New-York, a witness produced by the defendants, being duly sworn, deposeth and saith, that he received directions from bishop Moore to summons all the presbyters in the diocese, who were entitled to seats in the convention, to attend him on the 5th November 1811, at No. 20, Robinson-Street, to take into consideration the affairs of the plaintiff and the vestry of Trinity Church: he prepared the notices accordingly, and took them to bishop Moore, who directed his son, Clement C. Moore, to sign them for him, which he did, and handed them to the deponent, who afterwards put them in the post-office.

On being cross-examined, he says, that he was present at a meeting of bishop Moore and some of his presbyters in October 1811. He is not certain, but he thinks the rev. Mr. Barry was not present. He thinks that meeting was held on the day after the adjournment of the convention. The merits of the plaintiff's case with Trinity Church was there discussed; the necessity of the plaintiff's being separated from

that church, and the terms on which that should be done. There was nothing formally done at that meeting—nothing committed to paper. The clergy were unanimous as to the necessity of a separation, and the condition as to the allowance of 1000*l.*; but there was some little contrariety of opinion as to the manner of bringing it about. He does not know that the plaintiff was summoned to attend, and thinks that he was not. He does not know that any of the clergy were formally summoned except Dr. Beach, who was sent for after they had assembled. Dr. R. C. Moore, Dr. Harris, Mr. Feltus, and Mr. Haskel were not present. Deponent understood at the time that bishop Moore had conversed with Dr. R. C. Moore and Dr. Harris on the subject. Drs. Moore and Harris and Mr. Feltus did attend the convention in October 1811. He is not sure that Mr. Haskel did. He thinks that all the clergy who met in October sat on the plaintiff's case in November. The determination in November was what had been agreed upon in October previous. Deponent says, that he does not know how or why the final sentence bears date on the 5th October, but has no doubt that it was owing to mistake. The paper now shown to him, being the decision of the bishop and his presbyters on the 5th November 1811, which was served on the plaintiff, may have been transcribed a few days before the meeting in November. He does not know when the original was first written—it was some time after the meeting in October, and before the meeting of November. Deponent says, that when he made the transcript aforesaid, he left no blank for the sum of a thousand pounds. He thinks that sum was inserted in consequence of the determination in October. He did not summon to the convocation in November, Mr. Jarvis, Mr. D. Moore, Mr. Felch, Mr. Urquhart, or Dr. Burges; neither of those gentlemen were entitled to seats in the convention, and they were the only presbyters at that time in the state who were not entitled to a seat in the convention.

On being again examined by the defendants, he says, that he did not consider the meeting in November 1811, on the subject of the plaintiff, bound by what was done at the meeting in October, but he thought it probable the business would

take the same course. There was no formal vote taken in October 1811, and that what he has said in his cross-examination respecting the determination on a sum, refers merely to the unanimity of opinion on that subject.

On being again examined by the plaintiff, the deponent says, that he did suppose that the opinion of the meeting in October 1811, would be final, because he did suppose that the plaintiff would be induced thereby to quit his connexion with Trinity Church :—and further he saith not.

New-York, ss. WILLIAM BERRIAN, of the city of New-York, a witness on the part of the defendants, being duly sworn, deposeth and saith, that he is now in the twenty-seventh year of his age, he became acquainted with Dr. Hobart in February 1805, and has ever since been very intimate with him, and much in his family ; he thinks Dr. Hobart has been in the habit of unreserved and confidential intercourse with him. The deponent commenced the study of divinity under Dr. Hobart's direction in August 1808 ; until the year 1809, the deponent never discovered any thing on the part of Dr. Hobart unfriendly to the plaintiff ; nor heard him speak of him, but in a way calculated to produce esteem ; and he discovered a solicitude to make deponent feel esteem for the plaintiff. In the early part of the spring of 1809, Dr. Hobart mentioned to deponent some particulars in the conduct of the plaintiff, which he regarded as unfriendly towards him ; he spoke of it with regret, and not in terms of bitterness, or resentment. After deponent was in orders, Dr. Hobart requested him to call on the plaintiff, and make a tender of his services to officiate for him ; saying that it was a duty which deponent owed to the plaintiff, as well as to the other clergy. The conversation which he had with Dr. Hobart before mentioned, was the first intimation which deponent had of any unfriendly feelings, on the part of the plaintiff, against Dr. Hobart. Soon after, it became very well understood among the clergy ; the deponent was a member of the theological society, while Dr. Montross belonged to it ; he considered him indolent, and not calculated to be very useful, or respectable in the ministry, and appeared to possess a vulgar

cast of mind. The deponent has not seen any other indications of strong passions on the part of Dr. Montross, except a letter which he wrote to bishop Hobart on the subject of bishop Moore.

On being cross-examined, the deponent says, that he married a niece of Mrs. Hobart's, about nine months ago; he gave a certificate, which was published in Dr. Hobart's letter to the vestry; when, he does not recollect, but he remembers, that a month or two, or perhaps a little more, before the publication of the plaintiff's "Solemn Appeal," Dr. Hobart informed deponent that he should probably want such certificate, grounded, as the deponent believes, on the circulation of the plaintiff's book in manuscript, and the expectation that it would soon be published. In the certificate which the deponent gave Dr. Hobart, there were some things respecting the degree of intimacy between Dr. Hobart and the deponent, which were omitted by Dr. Hobart in the publication, as surplusage. The certificate published, is in every other respect, as written by the deponent. The circumstances alluded to by Dr. Hobart in the conversation with the deponent in 1809 before mentioned, were the plaintiff's pressing the introduction of Dr. Montross and Mr. Gillet in the ministry, against the known opinion of Dr. Hobart, and most of the other clergy, who thought them unfit; and in one instance, in relation to one of those persons, the standing committee was either convened, or urged to be convened by the plaintiff in the absence of Dr. Hobart; he thinks that one other circumstance mentioned by Dr. Hobart in the conversation aforesaid, was, that the plaintiff had expressed himself disrespectfully concerning some of the writings of Dr. Hobart, among some of the congregation of Trinity Church. For two or three years subsequent to 1808, the deponent was in the habit of visiting in the family of the plaintiff frequently, he never heard him speak disrespectfully of Dr. Hobart. The reason why he did not proffer his services to the plaintiff, as recommended by Dr. Hobart, was that deponent was not then so intimate with, and had not the same attachment for, the plaintiff as for some of the other clergy. The deponent says, that he has never heard any thing against the charac-

ter of Dr. Montross as a man of truth, and morality, which is all he can say on the subject, having no particular acquaintance with him;—and further the deponent saith not.

New-York, ss. NATHANIEL BOWEN, of the city of New-York, a witness produced by the defendants, being duly sworn deposeth and saith, that he is rector of Grace Church, in the city of New-York, and was present at a convocation of bishop Moore and his presbyters on the 5th of November 1811. Deponent considered bishop Moore in possession of his mental faculties, and competent to the business before him at that time. He recollects that Dr. R. C. Moore was interrupted in the remarks he offered to that convocation, on account as deponent conceived, of their irrelevancy to the subject before them, and their being insulting to the feelings of bishop Moore, and calculated unnecessarily to agitate his mind; he being then weak in bodily health. Deponent thinks, that that convocation was conducted with propriety and decorum, except in so far as it was interrupted by the offensive observations of Dr. R. C. Moore, and Mr. Feltus. The deponent recollects but two interruptions of Dr. Moore, when he was called to order, and appeals were made to the chair. After the second interruption, Dr. Moore sat down; and although requested to proceed by the president, Dr. Moore declined, and did not proceed. He recollects that a few weeks prior to 5th November 1811, he was notified by bishop Moore, to meet him and his presbyters at Mrs. Moore's in Robinson-street, the object of which meeting, as deponent understood, was the consideration of the case of the plaintiff, and the vestry of Trinity Church; which had been referred to bishop Moore by the vestry. The deponent attended in consequence, and met bishop Moore, and a number of the clergy; the only clergymen he can now distinctly recollect who were present, were Dr. Beach, Dr. Bowden, Dr. How, and Mr. Phelps, but there were several others. Mr. King was sent for after they had met, as one of the wardens of Trinity Church, to explain the grounds on which the request of the vestry was made; and he attended in consequence, and stated, that the agitation produced in Trinity Church by

the plaintiff's "Solemn Appeal," made it expedient, in order to restore the peace and tranquillity of the church, that the plaintiff's connection with that church should be dissolved, but he disclaimed all idea of calling in question the character of the plaintiff; his statement was concise, and after making it, he withdrew. The meeting then proceeded to confer together, and after deliberating for about three quarters of an hour, they unanimously adopted a resolution, recommending it to the plaintiff to retire from Trinity Church upon the vestry paying to him, a certain sum, the amount of which deponent does not recollect. Soon after the aforesaid meeting, apprehension was entertained by some person (who the deponent does not know) that the validity of their proceedings might be called in question, on account of all the presbyters of the diocese not having been summoned to attend, who were entitled to vote in the conventions of the church; and which being communicated to bishop Moore, as the deponent understood, he determined to call another convocation; and in consequence, that of the 5th of November was summoned. Deponent says he always considered bishop Moore, as the acting bishop of the diocese, since he first became acquainted with the church in New-York; until the election of bishop Hobart, bishop Moore always exercised the power, and deponent considered him as having the right exclusively until the first meeting of the standing committee, after bishop Moore's illness, when a doubt was created in the mind of the deponent, which however was immediately afterwards, and on mature reflection and examination, wholly removed. Deponent thinks, that the convention of the diocese, is the proper tribunal to determine the question, who is the diocesan; and that the house of bishops, have no power to define the local jurisdiction of a bishop, or to ascertain it where it is doubtful.

On being cross examined he says, that the spiritual authority of a bishop, is conferred by the act of consecration, according to the tenets of the episcopal church; and the spiritual authority is conferred by the bishops who consecrate. The bishops who consecrate, do not in the act of consecration, act as a house of bishops. The deponent does not think, that the

house of bishops, acting as such, can convey any spiritual authority. The protestant episcopal church in its tenets of government, are the same in this country as in all others, except in so far as they are modified by the constitution and canons. The deponent thinks that the powers of bishops in their individual or collective capacities, in the protestant episcopal churches in all countries, is the same, except so far as it is modified, or affected by the laws of the particular country, or by the constitution and canons of the particular church, and so far as deponent recollects, this has been the case in all ages. The deponent does not know of any public act of bishop Moore, in his official character, since his illness, except that of calling a special convention in 1811, and his acts in relation to the plaintiff. Bishop Provoost acted at the consecration of bishop Hobart; bishop Moore did not, being more of an invalid. Bishop Provoost was at the time very unwell, and obliged to be lifted into his carriage when he went from church; he thinks that bishop Provoost was present at the delivery of the sermon, but is not certain. At the meeting of bishop Moore and some of his presbyters, in October 1811, before mentioned, Hr. Beach was not present at first, but was sent for, and attended before any thing was done, and nothing was done without his knowledge and concurrence at the time. The deponent has not a distinct recollection, but he rather thinks, the rev. Mr. Barry was present at that meeting. Mr. King was not present at that meeting for more than fifteen or twenty minutes. Deponent saw no paper expressive of the resolution adopted by that meeting, either drawn up or produced there; there was no secretary of the meeting appointed, or minute of the proceedings taken, as far as deponent remembers; the meeting he thinks was summoned for 12 o'clock at noon; he does not know whether the plaintiff was notified to attend or not; he was not sent for, and no one appeared on his behalf. The deponent gave the certificate to bishop Hobart, published in his letter to the vestry of Trinity Church, at the time it bears date.

The deponent on being again examined by the defendants says, that the powers of bishops in this country, whether con-

sidered individually or collectively are to be determined by Scripture, by apostolic practice, and by the constitution and canons of the protestant episcopal church in the United States. The rules or laws of the church of England, Scotland or Sweden, are not binding on the church in this country; nor have we any thing to do with those rules or laws, except so far, as they may be applied in the way of illustration. The deponent says, that a bishop from England, Scotland, or Sweden, might have acted in the consecration of bishop Hobart if requested so to do, by the other consecrating bishops; and the consecration, would not thereby have been invalidated. Bishop Provoost, in the consecration of Bishop Hobart, acted as a bishop at large, without reference to any jurisdictional authority. The deponent says, that the apostolic practice herein before referred to, is to be found in the history of the primitive church, as handed down by writers of approved authority;—and further the deponent saith not.

New-York, ss. ISAAC WILKINS, of West Chester, a witness on the part of the defendants, being duly sworn, deposeth and saith, that he is seventy years old and upwards; is rector of St. Peter's Church in West Chester, and has been a minister in the protestant episcopal church about thirteen years; he has always considered bishop Moore as the diocesan of this state for the last twelve years, and in no respect subordinate to bishop Provoost. Deponent was at the general convention at Trenton in 1801 as a delegate; and he thinks that the opinion expressed by the house of bishops at that time, as to the resignation of a bishop, was considered by the house of clerical and lay deputies as a mere opinion in no wise binding on them. Deponent and bishop Hobart were ordained priests at the same time, and deponent has been particularly intimate with him ever since. The deponent has always considered him, as deservedly in very high estimation among his friends in the church, who are very numerous; and from deponent's intimate personal knowledge of him, he thinks that his character is the very reverse of overbearing, arrogant, or tyrannical. Within a year or two previ-

ous to the appearance of the plaintiff's book, he heard bishop Hobart mention one or two things respecting the plaintiff, which he, bishop Hobart, considered unfriendly, and which he could not account for; prior to that time, he has no recollection of hearing bishop Hobart say any thing that denoted unfriendly feelings between the plaintiff and him. A short time before the appearance of the plaintiff's book, he, together with Dr. Harris and Dr. R. C. Moore, visited deponent at his house, when the subject of electing an assistant bishop was talked of, and a wish was intimated by them, that deponent would offer himself a candidate; when deponent observed, that he was too old to discharge the duties of a parish, and consequently too old to discharge the duties of a large diocese. In the course of the conversation Dr. Hobart's name was mentioned; when the plaintiff observed, that he had received such treatment from Dr. Hobart as he the plaintiff, could hardly bear; and that at times, he could hardly keep his hands from him. The plaintiff appeared to be very warm, and in walking backwards and forwards in the room, he said, that Dr. Hobart was the man that prevented deponent's getting St. John's Church.

Deponent was a member of the convocation of the 5th November 1811; he thinks that bishop Moore was on that occasion in possession of his mental faculties, equal to the discharge of the duties incumbent on him as president of that board. Deponent recollects that Dr. R. C. Moore was interrupted in an address he was delivering to that meeting, on account of expressions which were deemed disrespectful to the authority then assembled; but he was afterwards permitted to proceed, until it was found that he was going into the merits of the controversy between the plaintiff and bishop Hobart, when deponent interrupted him on the ground of the irrelevancy of his address. Deponent thinks that Dr. Moore was requested to go on again; but he did not proceed with his address. Deponent believes that he did afterwards take a part in debate. Deponent says, that the plaintiff might have brought his complaints against Dr. Hobart before the vestry of Trinity Church, who might have taken means to bring about a reconciliation of differences; or have laid it before

the bishop; or the plaintiff might, with two other presbyters, presented Dr. Hobart to the bishop: and deponent does not think that there is any other regular mode of proceeding in such cases, in the first instance.

On being cross-examined deponent says, that he was one of the deputies who waited on the house of bishops at Trenton in 1801, as he thinks at their request; when bishop White expressed a doubt or difficulty about a bishop's resigning: he has no recollection of what else passed in the house of bishops. The deputies returned with the same sentiments they had previously entertained on that subject; the business went on as usual; bishop Moore was consecrated, and as the deponent then and has ever since believed, the diocesan of this state, and as far as he understood the opinions of the members of the house of clerical and lay deputies, this was the opinion of all of them. Deponent says he thinks that if the house of bishops should consecrate a person, as an assistant, or coadjutor bishop, that person could not become a diocesan, without the subsequent act or concurrence of the house of bishops. The house of bishops has not, in the opinion of the deponent, any power, as a college of bishops separately in this country. He was present at the consecration of Dr. Hobart; he does not know who are meant by the bishops, mentioned in his letters of consecration. He considers a presbyter in this state is one who is settled in a parish in this state, and is under the jurisdiction of the bishop. A priest who is settled in a parish is under the jurisdiction of the bishop, although not instituted. He says that the convocation of the 5th November, 1811, was as orderly a meeting as he ever attended of the sort; there were occasional interruptions, but no clamour.

Deponent being again examined by the defendants, says, that if a person is elected diocesan, and presented to the house of bishops as such, they cannot consecrate that person an assistant bishop: they must consecrate according to his election, or not at all. The power of electing a bishop is in the state convention. Persons settled in parishes, since the passing of the canon requiring an institution, are not entitled, before they are instituted, to a seat in the convention;

but he thinks that canon does not apply to persons previously settled. He thinks that a person settled in a parish, although not instituted according to the canon, would be entitled to a seat in a convocation, if called on by the bishop; and he thinks it is incumbent on the bishop to summon to a convocation a person so settled; and further he saith not.

New-York, ss. JOHN BOWDEN, professor of moral science and belles lettres, in Columbia College, a witness on the part of the defendants, being duly sworn, deposeth and saith, that he has been an episcopal minister since the year 1774, has been settled in New-York, as professor as aforesaid, for about eleven years past. Bishop Moore has been the diocesan since the deponent came to this city; he was present as a presbyter at the meeting of bishop Moore and his presbyters, in November, 1811, when they sat upon the plaintiff's case. He thinks bishop Moore, on that occasion, was altogether competent to the business before them, and he presided with propriety and understanding; Dr. R. C. Moore was interrupted in his address to that meeting, which was in writing; deponent interrupted him because he thought Dr. Moore went into the consideration of matters with which they had nothing to do, and because he made use of observations tending to arraign the motives of the persons convened; afterwards Dr. Moore was requested to proceed, and he did proceed for some time, until bishop Moore said with a good deal of feeling, "Oh Dr. Moore!" which again interrupted him, and he was again requested to proceed, but he did not go on with the reading of his manuscript; deponent thinks however, that Dr. Moore afterwards took a part in the business that was before the meeting. The business of that meeting was conducted throughout with order and regularity, as much so as that of any deliberative body deponent ever attended. Deponent thinks, that the bishop has a right to summon such of the presbyters of the diocese, to meet him in convocation, as he may judge proper, and that no irregularity can be ascribed to him, if he should omit to call some of them, provided he has summoned a competent number to attend; that in cases where any authoritative

act is to be done, deponent thinks, that the distinction prescribed by the canon, in reference to seats in the convention as a matter of propriety, would be proper to be observed. Deponent says, that at the time of the meeting of bishop Moore and his presbyters, in November, 1811, the following persons, who were settled in the diocese as presbyters, had not been instituted agreeably to the canon, viz. David Moore of Staten Island, Mr. Jarvis of Bloomingdale, Mr. Felch of Bedford, Mr. Burgess of Brookhaven, and Mr. Urquhart of Peekskill. The paper now produced and signed with the proper hand of the deponent, the plaintiff, Mr. Lyell and Dr. How, and dated 28th February, 1809, he believes is in the proper hand writing of the plaintiff, and drawn up by him, and is so admitted by the plaintiff's counsel, which paper was presented to bishop Moore as diocesan, and acted upon by him in that capacity. Deponent says, that the publication of the plaintiff's "Solemn Appeal," produced in the congregations connected with Trinity Church very great uneasiness, and general dissatisfaction, so far as deponent's information extended; it was the subject of conversation between the deponent and a great number of the members of those congregations, and he does not remember to have conversed with one who did not condemn it in strong and unequivocal terms; a very considerable number of the members of that church did not wish to see the plaintiff officiate, in consequence of that publication, and from all that the deponent saw and learnt on that subject, he thinks that a regard to the peace and harmony of Trinity Church, made it highly necessary that the plaintiff should be separated from them; and the dissensions in the church continually increased, until the separation took place. Deponent has not, and never had a doubt, that the case of the plaintiff with Trinity Church came under the 32d canon of the general convention; deponent has been in habits of intimacy with bishop Hobart for eleven years past; his general conduct has been that of a very excellent man in a moral and religious point of view, and an exemplary man in the discharge of his clerical duties; deponent has never observed any thing like arrogance or haughtiness in bishop Hobart, but quite the contrary; de-

ponent had several conversations with bishop Hobart on the subject of the plaintiff, after he discovered that the plaintiff entertained unfriendly dispositions towards him, and after he had heard of the affair of Mr. Prentice, and before the publication of the plaintiff's "Solemn Appeal;" the deponent was astonished at the mildness with which Dr. Hobart always spoke of the circumstance, and he expressed his regret that the plaintiff had taken a wrong impression respecting him; he never showed the least resentment or bitterness; and the deponent thinks if he had harboured such feelings, that the deponent would have discovered it. Bishop Hobart once called on deponent, and after conversing about the plaintiff, asked deponent if he would speak to the plaintiff, and endeavour to dissuade him from indulging in hostility towards him, and expressed a wish that a friendly intercourse might be re-established between them: a wish that they might live on friendly terms, was more than once expressed by bishop Hobart to deponent. Deponent says, that he knows, that some time after bishop Hobart had heard of the unfriendly dispositions of the plaintiff towards him, he had it in contemplation to remove to New-Jersey, and the deponent persuaded him from it, and that one of the leading motives to such a step, was the uneasiness in the church, which grew out of the plaintiff's opposition to him. Deponent had heard Dr. Beach condemn the publication of the "Solemn Appeal," and has frequently heard him speak of the plaintiff's conduct towards him, before the disturbances in the church, as very disrespectful and improper. Deponent says that he does not believe that Dr. Hobart took any pains to secure the office of bishop to himself. He never informed deponent that he would accept the office, and deponent believes that he had a severe conflict in his own mind, before he did consent to accept it. Deponent always thought that Dr. Hobart would succeed bishop Moore, as bishop of this state; and as far as deponent was acquainted with the opinion of others, such was their opinion also; he thinks that if the plaintiff had any matter of complaint against bishop Hobart, that it was competent to him to prefer such complaint before the proper authority of the

church, and then to have it enquired into and settled. He never heard that the plaintiff did pursue the steps in such case directed by the canon. Deponent says, that he believes he is the person referred to in the 83d page of the "Solemn Appeal," relative to the office of assistant bishop in the state of Connecticut, and that the statement therein made relative to that matter, is wholly incorrect.

On being cross-examined, deponent says, that when he attended bishop Moore and his presbyters, in November, 1811, he was not settled in a parish, nor was it necessary that he should be; when Dr. R. C. Moore was interrupted at that meeting, as before stated, he was reading from a manuscript. Deponent thinks that as by the canon eight presbyters are sufficient to try a clergyman on a criminal charge, that number would be sufficient in the case of the plaintiff. Deponent does not think that it is incumbent on the bishop to summon all the presbyters in such case; but that it is a matter in his discretion. Deponent has heard of several of the congregation of Trinity Church being dissatisfied with bishop Hobart and Mr. How, in relation to the dispute with the plaintiff; it may be half a dozen, or perhaps more. After the dismissal of the plaintiff from Trinity Church, by the publications in the newspapers against the vestry of Trinity Church, and Dr. Hobart and his friends, the disgust among the members of the church towards the plaintiff was increased. There were publications some time afterwards, in the form of pamphlets and hand-bills, on the side of the vestry of Trinity Church and bishop Hobart. He thinks he has seen a poetical production, in the form of a hand-bill, ridiculing the plaintiff; cannot say whether it was called the epitaph of Mr. Jones, nor when he saw it. Deponent says, that in his opinion, in order to justify a proceeding under the 32d canon, there need not necessarily be an attempt to accommodate among the parties; but that it must depend on the nature of the case. Deponent was present at a meeting of bishop Moore and some of his presbyters, in October, 1811, on the subject of the plaintiff; and further he saith not.

INTERROGATORIES to be exhibited to the honourable Rufus King, now in the city of Washington, a witness on the part of the rector and inhabitants of the city of New-York, in communion of the protestant episcopal church in the state of New-York, in a certain arbitration depending between them and the rev. Cave Jones.

First—Were you on the first of May, in the year 1811, and for any and what time prior and subsequent to that date, a member of the vestry of Trinity Church in the city of New-York?

Second—Do you know of the existence of any controversies or differences between the rev. Mr. Jones and the vestry of Trinity Church, or the congregation thereof, at or about the period referred to in the preceding interrogatory? If you have such knowledge, state the origin and progress of such controversies or differences.

Third—Were you present in your place as a member of the said vestry when the report of the committee, appointed to take into consideration a publication of the rev. Mr. Jones, entitled, "A Solemn Appeal to the Church," was read and considered? If you were so present, do you know of any general understanding or expectation at that or at any other time, on the part of the vestry, or of the individual members composing it, that all antecedent differences with Mr. Jones were settled and terminated by the said report, and the resolutions passed thereon? What, according to your impressions, were the views and expectations of the vestry in passing the said resolutions, and what were your own individual views and understanding on that occasion?

Fourth—Do you know of any communications between Mr. Jones and the vestry of Trinity Church, on the subject of the said differences, other than the communication of the said report and resolutions, prior to the fifth day of September in the year 1811? During the interval between that date and the publication of the said book, was the vestry informed by Mr. Jones, or otherwise, to your knowledge, of the suppression of the said publication; and was or was not the

said publication in fact suppressed during that interval, as you know, or have any and what reason to believe?

Fifth—Were you a member of the general convention of the protestant episcopal church in the United States, held at New-Haven, on the day of May, in the year 1811—and did you attend the same? If you did so attend, do you know of the circulation of the said book among the members of the said convention, or others in the state of Connecticut, or elsewhere?

Sixth—What, according to your observation, belief, and information, was the state of Trinity Church and its chapels and congregations, in reference to the rev. Mr. Jones, between the time of the publication of the said book and the said fifth day of September, 1811, and upon what considerations, if any, was it deemed proper and necessary that the connexion between Mr. Jones and the vestry should be dissolved?

Seventh—Were you one of a committee appointed by the vestry, during that interval, to take into consideration the state of the church? Was that a standing or a special committee? If special, what was the occasion and object of its appointment? Who acted as chairman, and who drafted and presented the report made to the vestry by the said committee, on the said fifth day of September, 1811? If within your recollection, state the motives in reference, as well to Mr. Jones as the church, by which you were induced to recommend the course of proceeding suggested by that report, in preference to a dismissal into a presentment and trial of Mr. Jones, and explain the grounds of the opinions expressed in the said report relative to the two modes of proceeding therein adverted to, in order to a dissolution of connexion between him and Trinity Church?

Eighth—Have you for any and what number of years last past, been a member of the state and general conventions of the protestant episcopal church, and acquainted generally with its affairs and history? Who, during that period referred to, has exercised the office of diocesan bishop of the state of New-York, and has been acknowledged as such by the authority of the church?

Ninth—What is the distinction between the office of assistant rector and assistant minister in Trinity Church, as generally understood in the vestry, and what, according to your recollection and belief, has been the general opinion and understanding of the vestry, and what your own individual opinion and understanding in relation to the tenure of the said offices respectively?

Tenth—Where, according to the general understanding of episcopalians, and according to your own view of the nature and plan of the government of the protestant episcopal church in the United States, resides the power of electing bishops and receiving the resignation of their jurisdiction? What controlling power, if any, have the house of bishops, in relation to such elections and resignations? If you have any information or knowledge on the subject of this inquiry, declare your sentiments concerning the points above suggested, and explain the reasons and grounds of the same.

Eleventh—While a member of the said vestry, were you, at any time prior to the publication of the said book, informed by Mr. Jones or any other person, and whom, of his intention to publish the same; and was not the said book, in manuscript, read or offered to you to be read before its publication in print? If you were, when were you so informed, and what advice or opinion, if any, did you express to Mr. Jones respecting such his intention?

Twelfth—Are you now a corporator of the corporation of the rector and inhabitants of the city of New-York, in communion of the protestant episcopal church in the state of New-York, or not, and if not, when did you cease to be such—and have you, personally or otherwise, any interest in the controversy mentioned in the title of these interrogations?

Thirteenth—Do you know of any other matter or thing useful for the said rector or inhabitants of the city of New-York, in communion of the protestant episcopal church in the state of New-York, to prove, in relation to their controversy with the rev. Cave Jones, besides what you have been particularly interrogated unto? If you do, set forth the same as fully and at large as if you were thereunto particu-

larly interrogated, with the grounds and reasons of your knowledge and belief respecting such matters.

CROSS-INTERROGATORIES to be exhibited to the honourable Rufus King, now in the city of Washington, a witness on the part of the rector and inhabitants of the city of New-York, in communion with the protestant episcopal church in the state of New-York, in a certain arbitration depending between them and the rev. Cave Jones.

First—If to the second direct interrogatory your answer is, that there were such differences and controversies, please to explain what you mean or intended by differences and controversies. Was there any difference or controversy on the part of Mr. Jones with the vestry? Do you not know, or did you not understand, that previous to the existence of any difference or controversy between Mr. Jones and the vestry, (if any such existed) there were differences and controversies between the rev. Mr. Jones, the rev. Dr. Hobart, and the rev. Mr. How, or one of them? And was there any difference or controversy, to your knowledge or belief, between Mr. Jones and the vestry, other than what may be considered to have its existence from the resolution of the vestry, passed in the month of May, one thousand eight hundred and eleven?

Second—Was there upon the reception of the report referred to in the third direct interrogatory, and after the resolution thereon, any expression of any member of the vestry, expressed in his place as member of the vestry or otherwise, that there were to be, that there ought to be, or that there would be any further proceedings by the vestry against the rev. Cave Jones, in consequence of his publication of the "Solemn Appeal?" If yea, when and by whom were these expressions used? and particularly please to answer, as well as your recollection will permit, as to the time when such expressions were made. Were there any such expressions previous to the receipt of Dr. Hobart's letter to the vestry? If yea, how long before the vestry received the said letter? When the said last mentioned resolution of the vestry was

passed in May, one thousand eight hundred and eleven, did you yourself then at that time, contemplate that there were to be any other ulterior proceedings of the vestry against Mr. Jones, in consequence of his aforesaid publication?

Third—Did you not, some time after the publication of the “Solemn Appeal,” and how long after, suggest to the rev. Dr. Harris, that the vestry expected the suppression of Mr. Jones’s book, called the “Solemn Appeal,” with the view that the rev. Dr. Harris should communicate such expectation to Mr. Jones? and did not Dr. Harris shortly after, and when, inform you that Mr. Jones had suppressed the publication of the “Solemn Appeal?” Was not your communication to Dr. Harris, on this subject, made in the month of June, one thousand eight hundred and eleven?

Fourth—What, according to your observation, belief, or information, was the state of Trinity Church and its chapels and congregations, in reference to the rev. Dr. Hobart and rev. Mr. How, or either of them, between the time of the publication of the “Solemn Appeal, and the fifth day of September, one thousand eight hundred and eleven?

Fifth—If you were one of the committee of the vestry which reported on the fifth of September, one thousand eight hundred and eleven, was there ever any communication between that committee and the rev. Cave Jones, in relation to the subject on which the committee reported?

Sixth—Was there ever, according to your knowledge, information, or belief, a person appointed to officiate as assistant rector of the vestry, previously to the appointment of the rev. Dr. Beach, to officiate in that capacity, in the year one thousand eight hundred and eleven? Is such an appointment made by the vestry, or by the rector, and how is he removable?

Seventh—Do you know of any other matter or thing useful for the said Cave Jones, in relation to the matters before inquired of, besides what you have been particularly interrogated unto? If yea, set forth the same as fully and at large as if you were thereunto particularly interrogated, with the grounds and reasons of your knowledge and belief respecting such matters.

THE ANSWERS of Rufus King to certain interrogations exhibited to him on the part of Trinity Church, in the city of New-York, concerning an arbitration depending between them and the rev. Cave Jones.

First—Upon the first day of May, 1811, I was a warden of Trinity Church; had been a warden thereof, according to my recollection, from the annual election in 1805, and continued to be so until the annual election of 1812.

Second—I have no knowledge of any controversy or difference between the vestry and the rev. Mr. Jones, before the publication of his “Solemn Appeal;” the controversy or difference which afterwards arose between them, owed its origin and progress to that publication.

Third—I was present at the meeting of the vestry, when the report, mentioned in this interrogatory, was considered and adopted. My own views, and, as I believe, those of the vestry, in adopting this report, are explained by the report itself. My own expectations, and as far as I am informed, those of the other members of the vestry, were, that by the communication of this act of the vestry to Mr. Jones and to the bishop, Mr. Jones would be led to reconsider his conduct in the publication of his “Solemn Appeal;” in doing so, that he would discover the danger of division and disorder in the congregation which his publication was likely to create, the influence it might have upon the approaching election of a bishop, the blemish it might make upon the reputation of the church, should Dr. Hobart be elected and consecrated bishop; the irregularity of bringing his differences with his brethren before the public, instead of following the direction of the canons, which are obligatory on such occasions. As the “Solemn Appeal” was made upon the eve of the meeting of a special convention, brought together for the election of a bishop to assist bishop Moore, I thought that its influence upon that measure would be diminished by the tenor of the report of the committee.

With these expectations, the adoption of the report was, as regarded Mr. Jones, for the purpose of admonition; and

whether the vestry would become reconciled to him, would therefore depend upon his future behaviour.

Fourth—I have no recollection of any communication between the vestry and Mr. Jones, between that made in May on the part of the vestry to Mr. Jones, and the September following, when the vestry received from Mr. Jones his letter to them dated early in that month; nor do I remember when, if at all, the vestry received information that Mr. Jones had suppressed the “Solemn Appeal.” After the general convention at New-Haven in the month of May 1811, and as I believe, in the month of June following, in conversation with the rev. Mr. Harris, I observed to him that as the vestry had disapproved of the publication of the “Solemn Appeal,” I had thought that Mr. Jones should immediately have suppressed it; instead of which, that it had continued to be publicly distributed; copies of it had been furnished to members of the general convention, and that it still continued to be sold and circulated: I remember, and probably about the same time, to have made the same observations in the vestry, as evidence, that the report concerning the “Solemn Appeal,” which had been adopted by the vestry, had failed to have the salutary influence upon Mr. Jones, that it was expected it would have had; Mr. Harris afterwards, and as I am persuaded in the same month June, informed me, that he had communicated to Mr. Jones my observations to him—that Mr. Jones remarked, that he had not been aware that the suppression had been expected, but that the remaining copies should be withdrawn from the booksellers: which Mr. Harris said had been done. Upon this point I have no other information, and whether the conversation between me and Mr. Harris was communicated by me to the vestry, I do not recollect.

Fifth—I was a member of the general convention at New-Haven in May 1811—the “Solemn Appeal,” as I firmly believe, was known by the members of that body; it was the subject of much conversation at New-Haven, and if I be not mistaken, was publicly alluded to, and in no favourable terms, in the convention.

Sixth—During the period mentioned in this interrogatory the state of Trinity Church and her chapels was that of division and disorder. The vestry by adopting the report of their committee in May, having expressed their disapprobation of Mr. Jones's publication—Mr. Jones and his friends, with activity and zeal, as I understood, endeavoured to vindicate his conduct, and represented him as an injured and persecuted man; while those who, with the vestry, disapproved of Mr. Jones's conduct, with equal zeal and activity endeavoured to establish their opinions among the parishioners: the consequence of this disorderly condition of the congregation had been foreseen, and the fears of the vestry were justified by the heat, uncharitableness and division which were extending themselves throughout the parish. The continuance of Mr. Jones as one of the assistant ministers, in this situation of the congregation, would, in my opinion, have given strength and permanency to this state of disorder; while his separation would naturally stop the further progress of the dispute, and in time re-establish the harmony that had prevailed in the congregation.

Seventh—As well as I am able to recollect, it was sometime in the month of June, that the vestry appointed a committee to take into consideration the state of the church; of their committee I was the chairman, who drafted, and in behalf of the committee presented to the vestry the report of September. This was not one of the standing committees which, according to my recollection, are appointed at the first meeting of the vestry after their annual election, but a special one. The subjects referred to the committee, as I understood, were the inability of the rector to discharge the duties of his office, the advanced age and infirmity of the assistant to the rector, the expediency of providing additional help in the performance of divine service, and the disorder in the congregation, which had been occasioned by the publication of Mr. Jones's "Solemn Appeal." The measures recommended by the committee for the purpose of putting a stop to this disorder, were the separation of the chapels, and the dissolution of the connexion with Mr. Jones. As I am desired to explain the views and motives which influenc-

ed me in recommending the course, which was afterwards adopted by the vestry to effect the dissolution of the connexion with Mr. Jones, as well as I am now able, I will endeavour to do so. According to the general tenor of the canons, the connexion between a minister and his parish is to continue during good behaviour, and not to be dissolved except under the sanction of the bishop: the canons, however, allow that this regulation may be controlled by usages and contracts, which establish a different tenure in the place or office of a minister; so that, where, by the tenor of the contract, as I conceive to be the case in respect to an assistant minister of Trinity Church, the place of a minister is held during pleasure, the connexion may be dissolved at the pleasure of either party; the canons not applying to such contracts. But although this mode of dissolving the connexion between a minister and his parish, may in such cases be employed, either party may forbear to make use of it, and in lieu thereof, may adopt for such purpose the course pointed out in the thirty-second canon, provided the controversy or difference be such as is described in that canon. It must be immaterial how such controversy begins, nor is its nature of any importance. Whether it arises from indolence or negligence, levity or imprudence, irregularity or indecorum, dangerous examples or criminal conduct, seems to be immaterial; for any one of these causes may, and as I believe every one of them has, become the occasion of differences which could not be settled between the clergymen and their parishes.

The parish complains, but the clergyman does not reform; he persists in his delinquency, and the parish, as I have thought, may adopt the course pursued by Trinity Church in the case of Mr. Jones, to effect a separation. This course, as regards the rights of the clergy, and the peace of the church, is in my opinion, preferable to any other. It did not occur to me, while a clergyman affords to his parish continual cause of dissatisfaction and complaint, that because he does not complain of them, that therefore there is no controversy or difference between them. But it did seem to me to be true, where one party violates his duty, and the other hav,

ing an interest in its performance, complains of its violation; that a difference exists between them.

A disagreement existed between Mr. Jones and one of his colleagues. Mr. Jones by his "Solemn Appeal," resorted to a mode of defending himself and assailing his colleague, which is contrary to the rules of his order, and which it must have been foreseen would create division and disorder amongst his parishioners. The vestry disapproved of Mr. Jones's conduct, he persisted in the vindication of it. Observing the increase of the division and disorder of the congregation, the vestry became satisfied that its peace could be re-established only by the dismissal of Mr. Jones.—Upon examination of the contract between the vestry and Mr. Jones, I became satisfied that the vestry by a vote of their board could dismiss Mr. Jones. This mode was recommended by members of the congregation, because it would be the most summary. But to do this without a hearing would at any time have been a questionable measure; and, in the state of irritation that existed in the congregation, to have called upon Mr. Jones to defend his conduct would have brought on a trial, which might have confirmed the division that already existed. In these circumstances the committee recommended, and the vestry adopted the course pointed out in the thirty-second canon; and alleging the difference between them and Mr. Jones which had arisen out of the publication of his "Solemn Appeal," they prayed for a dissolution of their connexion with him upon the terms of the canon. In doing this they avoided the appearance of becoming themselves both judge and party; and by submitting the decision of their complaint to the bishop and his presbyters, persons of Mr. Jones's condition, whether such decision should continue or remove Mr. Jones, I myself, and as I cannot doubt, the vestry, confidently looked to its influence and authority, as the only means of restoring harmony to the congregation.

Eighth—While I was warden of Trinity Church I was several times, how often I do not remember, appointed a lay delegate to the state convention. I attended two or three meetings of the state convention. I was a member and at-

tended the meeting of the special convention which elected Dr. Hobart to be bishop. I was also a member and attended the state convention in October 1812. I was more than once appointed by the state convention a lay delegate to attend the general convention, but I have only attended the last general convention, which was held at New-Haven in May 1811. During the time that I was a member of the vestry of Trinity Church, I understood and believed that bishop Moore, and he only, was the diocesan bishop of the state of New-York; and until a question upon this point was raised by Mr. Jones, I never heard any doubt expressed respecting the same.

Ninth—I have no recollection of having myself examined, nor of having heard the opinion of others upon this subject, until the present rector of Trinity Church became unable to meet with the vestry. Upon examining the charter upon this occasion, I was of opinion that the assistant rector must be appointed in the manner prescribed by the charter, and that pursuant to its provisions, that he would hold his place during his natural life, subject to the limitations expressed in the charter. In respect to “the assistant ministers” of Trinity Church, it was my opinion that they do not hold their places by the same tenure. The contracts between them and the vestry expressing no other tenure, it has been my opinion that they severally hold their places during pleasure. Whether any other instance has occurred of the appointment of “the assistant to the rector,” than the late one of Dr. Beach, I am not informed; but upon looking into the charter when Dr. Beach was appointed, I was satisfied of the necessity of such appointment, as in the absence of the rector, “the assistant to the rector” can alone preside in the meetings of the vestry. Upon inquiry I could not find that “an assistant minister” of Trinity Church had ever presided in such meeting.

Tenth—As I understand the subject, and as I believe it to be generally understood, (although upon this head I have no other information than the decision of our late convention) the whole power of electing bishops, and of accepting the resignation of their dioceses, is vested in, and exclusively belongs to the respective state conventions of clerical and

lay deputies; and whether the person so elected be already a bishop or a presbyter, who according to the canons may become a bishop, the house of bishops neither have nor ought to have any power of control in either case.

Eleventh—Some short time before the publication of Mr. Jones's "Solemn Appeal," I had a conversation with him upon that subject. Whether it was Mr. Jones or the rev. Mr. Harris, I am uncertain, but one or the other of them requested me to read Mr. Jones's manuscript, which I declined doing; and in my conversation with Mr. Jones, I endeavoured to dissuade him from publishing, suggesting the mischief which I apprehended would grow out of the publication.

Twelfth—I am not a member of the corporation of Trinity Church, nor have I, to my knowledge, any personal interest in the controversy between it and Mr. Jones.

Thirteenth—I have nothing particular to answer to this interrogatory.

(Signed) RUFUS KING.

District of Columbia, to wit.—On the 8th day of July, 1813, before me, William Cranch, chief judge of the Circuit Court of the District of Columbia, came the within named Rufus King, and made oath in due form of law that the within and foregoing answers by him subscribed, to the annexed interrogatories, are true as stated.

Sworn before me,

(Signed) W. CRANCH.

Answers by Rufus King to the cross-interrogatories concerning the matter in arbitration between Trinity Church and the rev. Cave Jones.

First—I have endeavoured, in my preceding answer to the seventh direct interrogatory, to explain myself upon what I consider to have been the controversy or difference between the vestry and Mr. Jones, to which explanation I here refer: A difference having existed between Mr. Jones and his colleague, Dr. Hobart, the subject was brought by Mr. Jones's "Solemn Appeal" before the congregation. Without examining or expressing any opinion concerning this difference

between Mr. Jones and Dr. Hobart, the vestry disapproved of Mr. Jones's conduct in his appeal to the public. By conversation, by the interference of friends, and by the circulation of his "Solemn Appeal," Mr. Jones, nevertheless, endeavoured to vindicate his conduct; and so a controversy or difference arose between him and the vestry. I have no knowledge of any other difference between the vestry and Mr. Jones.

Second—At the first meeting of the vestry after the publication of Mr. Jones's "Solemn Appeal," one or more members, but I am uncertain which of them, adverting to the same, intimated an opinion, that immediate measures ought to be adopted to censure Mr. Jones. I myself expressed a hesitation in deciding any thing upon the subject at that time, and recommended a delay. Afterwards, when the report of the 18th of May was considered and approved, I thought it to be a temperate measure; and I did hope that it would have the effect to induce Mr. Jones to retrace his steps. I have no recollection that any member of the vestry expressed an opinion at this meeting, that any further proceedings should be had respecting Mr. Jones; but it certainly was my own expectation, and, as I believe, must have been the expectation of others, should Mr. Jones persist in the circulation and vindication of his "Solemn Appeal," and thereby draw the congregation still further into the dispute between him and Dr. Hobart, that the vestry would be obliged, in order to preserve the peace and union of the congregation, to adopt other measures to restrain Mr. Jones. After the appointment of the committee on the state of the church, it was suggested to me, according to my recollection, by members of the vestry, as well as by others, that there could be no harmony in the congregation while Mr. Jones remained among us. Great dissatisfaction had by this time manifested itself in the congregation; the greater portion of whom disapproved of Mr. Jones's conduct, while his friends were industrious in apologising and justifying the same. In this state of agitation in the congregation, which had been brought about by Mr. Jones's conduct, there appeared to me no other

prudent course that could be pursued by the vestry, than that which was afterwards adopted by them.

The dissolution of the connexion between Mr. Jones and the congregation would put an end to the unceasing discussion of his conduct: and it was my expectation, this being done, that the congregation would again become united and quiet. The terms of this separation were wholly referred to Mr. Jones's brethren; for my own part, for various reasons, I wished them to be liberal terms; and as Mr. Jones's clerical character would be continued, it was my sincere hope, that he might form a new connexion that would be satisfactory to him, and conducive to the welfare of the church.

Third—I refer to my answer to the seventh interrogatory in answer to this.

Fourth—As I have already stated, I here repeat that the congregation was divided in opinion. The facts charged in the "Solemn Appeal" against Dr. Hobart and Mr. How were urged as excuses for Mr. Jones, and I cannot doubt that members of the congregation believed that Mr. Jones had been hardly treated.

Fifth—No such communication was held.

Sixth—In answer to this interrogatory, I refer to my answer to the _____ interrogatory.

Seventh—I have nothing in particular to answer to this interrogatory ; but I owe it to myself, perhaps to Mr. Jones, on this occasion to add, that whenever, in the course of this unhappy business, I anticipated its consequences to Mr. Jones and his family, I felt great reluctance in proceeding ; and the measure finally adopted of applying to the bishop to dissolve our connexion with Mr. Jones, was resorted to, on my part, as the only remaining means by which peace could be restored to the congregation.

RUFUS KING.

District of Columbia, to wit:

On the 8th day of July, 1813, the above named Rufus King came before me, William Cranch, chief judge of the circuit court of the district of Columbia, and in due form of law made oath, that the foregoing answers by him subscribed

to the cross-interrogatories hereunto annexed, are true as stated.

Sworn before me,

W. CRANCH.

The two following are documents accompanying the testimony for the defendants.

May it please the bishop,

By the 31st canon of the protestant episcopal church in the United States of America, adopted in general convention held in the year of our Lord 1804, and set forth by said convention held in the year 1808, it is provided, that every minister shall be amenable for any offences committed by him in any diocese, to the ecclesiastical authority of the diocese in which he resides. And by the first canon of the church in this state, passed in convention held in October, 1802, it is declared, that every trial of a clergyman in this church for misbehaviour shall be, on presentment made to the bishop by the convention, by the vestry of the parish to which a clergyman belongs, or by three or more presbyters of the church.

In virtue of the authority conveyed as aforesaid, and according to the mode thereby prescribed, we the undersigned presbyters of the church, acting under an awful sense of our duty as christians and as clergymen, and considering of how high importance it is to the prosperity of religion and of the church, that the character of its ministers be preserved inviolate and unimpeached, or that unworthy ministers be prevented from exercising the duties of that sacred function, present to you, that charges of a serious and immoral nature are alleged against the rev. John Ireland, now residing in the town of Brooklyn, in this state; and we therefore request that an ecclesiastical court may be summoned to enquire into the said charges, agreeably to the 2d canon of this church, in convention held in October, 1802. In order to constitute specific grounds of investigation and inquiry,

1st. We present unto you that the said rev. John Ireland stands charged with having been in the habit, while in the

exercise of the ecclesiastical functions, of loaning money on usurious interest.

2d. We present unto you, that the said rev. John Ireland did, upon relinquishing his charge at Brooklyn, behave towards the vestry of St. Ann's Church, in a manner derogatory to the character of a christian minister, and unbecoming a pastor taking leave of his flock.

3d. We present unto you, that the said rev. John Ireland, after relinquishing his charge at Brooklyn as aforesaid, refused to deliver up to the vestry, though frequently solicited, the communion plate, the church books, and the communion money; and that after he did deliver up the plate upon the settlement of another clergyman in said church and congregation, he still refused to deliver up the books and money as aforesaid, until the said clergyman should be regularly and canonically instituted, when he promised it should be done; that since the said clergyman hath been regularly and canonically instituted, he, the said rev. John Ireland has still retained the books and money as aforesaid, contrary to the wish and request of the vestry of St. Ann's church; he still promising from time to time, that their request should be complied with; which promise he has never yet fulfilled.

4th. We present unto you, that the said rev. John Ireland did, some time in the month of October last, assail with indecent language, and in a hostile manner, one of the vestry of St. Ann's Church, to wit, Mr. Samuel Sackett; that he challenged the said Mr. Sackett to fight; and did actually make an attempt to treat him with violence; in consequence of which conduct he the said rev. John Ireland was, to the disgrace of the clerical profession, bound over to keep the peace. These charges severally, we are led to believe, can be substantiated by sufficient evidence: and we request that the said rev. John Ireland may be condemned or acquitted, according as they shall or shall not appear to be founded in truth.

In testimony whereof we have hereunto signed our names in New-York, this 28th day of February, in the year of our Lord 1809.

(Signed)

JOHN BOWDEN,
CAVE JONES,
THOMAS LYELL,
THOMAS Y. HOW.

The Right Rev. Benjamin Moore, D. D.

Know all men by these presents that we, William White, D. D. bishop of the protestant episcopal church in the state of Pennsylvania, presiding bishop; Thomas John Clagget, D. D. bishop of the protestant episcopal church in the state of Maryland, Abraham Jarvis, D. D. bishop of the protestant episcopal church in the state of Connecticut, Benjamin Moore, D. D. bishop of the protestant episcopal church in the state of New-York, under the protection of Almighty God, in Trinity Church in the city of New-York, on Friday the 14th day of September, in the year one thousand eight hundred and four, did then and there rightly and canonically consecrate our beloved in Christ, Samuel Parker, D. D. rector of Trinity Church in the town of Boston, of whose sufficiency in good learning, soundness in the faith, and purity of manners, we were fully ascertained, unto the office of bishop of the protestant episcopal church in the commonwealth of Massachusetts, to which the said Samuel Parker had been elected by the convention of said commonwealth.

In testimony whereof we have signed our names, and caused our seals to be affixed.

Given in the city of New-York, this fourteenth day of September, in the year of our Lord one thousand eight hundred and four.

Signed	WM. WHITE,	L. S.
	THO. JNO. CLAGGET,	L. S.
	ABRAHAM JARVIS,	L. S.
	BENJ. MOORE.	L. S.

Commonwealth of Massachusetts,

Boston, May 25, 1813.

Suffolk, ss. The foregoing is a true copy of an original certificate on parchment in the possession of Mrs. Ann Parker, widow of the late right rev. Samuel Parker, deceased; which copy I have this day carefully examined and compared with the said original certificate.

Quod attestor, SAML. D. PARKER,
Justice of the peace in and for the county
of Suffolk, dwelling in Boston.

The following depositions on the part of the plaintiff were drawn forth, the first two wholly, and the others in part, by the testimony in behalf of the defendants.

New-York, ss. JOHN W. MONTROSS, of the town of Montgomery, in the county of Orange, being duly sworn, deposeth and saith, that he came to the city of New-York with an intention of commencing the study of divinity in the protestant episcopal church in the fall of 1806; and he first spoke to the plaintiff on that subject in the fall of 1805; before which time the deponent had no previous knowledge of him. The object of the deponent was to procure some assistance to enable him to prosecute the study of divinity. The plaintiff proposed to introduce the deponent to bishop Moore, which he did; but gave him no other encouragement. Bishop Moore received the deponent in a very friendly manner, and offered every encouragement he could desire. The deponent, however, after the said interview with bishop Moore, returned to the country, and postponed taking any measures towards a removal to the city, or the commencement of the study of divinity, until the fall of 1806, when he did remove to the city of New-York for that purpose; and then had a second interview with bishop Moore, whose conversation and manner to the deponent was entirely changed; he informed the deponent that they had then students enough, and that they did not wish to receive any students except such boys as were educated for the purpose. He at

the same time observing, that they had then eight in the college at Schenectady, and he told the deponent, that he had better go to Mr. Jones; upon which the deponent took his hat and left him. The deponent then determined to prosecute the study in his own means; but finding them likely to fail, he again applied to the plaintiff to procure him assistance, who told the deponent that he would make the attempt to procure something for him. After waiting for about six months, the deponent became dissatisfied with the plaintiff, not receiving any explanation from him; and was about making application to Dr. Hobart, when deponent was informed by Dr. Harris, that Dr. Hobart was opposed to him; and that the plaintiff had been very active in his favour. The deponent then wrote to Dr. Hobart, a copy of which letter he now produces. He did this in the hope of removing Dr. Hobart's objections, and without the knowledge of the plaintiff or any other person. In a few days after writing the aforesaid letter the deponent was informed by the plaintiff, that Dr. Hobart had shewed to him the aforesaid letter, and that he was very much displeased with the deponent for having written it; and the plaintiff also observed, that he was sorry it had been written. The deponent thereupon, and some time in the fall of 1808, waited on Dr. Hobart for the purpose of making any explanation of the aforesaid letter that might be necessary, when a conversation ensued, which lasted nearly an hour; and in which Dr. Hobart went on in a strain of violent invective against the deponent and the aforesaid letter, without allowing the deponent much opportunity for explanation or reply. In the course of Dr. Hobart's remarks on the aforesaid letter, he perverted the meaning of the deponent, and said that the deponent had therein accused the bishop of a devilish disposition of doing the deponent an intentional injury; to which the deponent replied, that he had not mentioned any person, and that Dr. Hobart could not apply what the deponent had written to the bishop, unless he knew that the bishop had done something to make the application proper. The deponent thinks that Dr. Hobart either said, or admitted by implication, that he had shewn the aforesaid letter to bishop Moore. In the aforesaid conversation be-

tween Dr. Hobart and the deponent, the deponent mentioned what had passed between bishop Moore and him at their first interview, and how much deponent had relied upon the encouragement which he then received from bishop Moore; to which Dr. Hobart replied, poh! I have many times said as much, to those whom I was determined to defeat. The deponent told Dr. Hobart that he, relying on the promises he had received from bishop Moore, had quit the practice of physic, and sold a small farm, and removed from all his friends to the city of New York, where he had but very few acquaintance, and that in consequence of his disappointment as aforesaid, the family of the deponent was reduced to extreme distress; to which Dr. Hobart remarked, that the deponent must not expect to move their pity as church officers, whatever they might do in their individual characters; and this was said in a very angry manner, as well as the conversation generally; the deponent replied, that he did not want to move their pity, but only to induce them to do justice. Dr. Hobart said, that he had been opposed to the deponent from the first, on account of the manner in which the deponent had been brought forward; that the plaintiff had not consulted him, and that the bishop had not mentioned it to him: this was pronounced in a vehement manner, evincing the utmost degree of wounded arrogance. The deponent says that from the time of his first application to the plaintiff, until the interview aforesaid with Dr. Hobart, the plaintiff never said any thing to excite the prejudices of the deponent against Dr. Hobart, but on the contrary, explained his writings on controversial subjects, in a way favourable to Dr. Hobart; and never made the deponent acquainted with the fact of Dr. Hobart's opposition to him the deponent. Shortly after the conversation with Dr. Hobart before stated, the deponent mentioned to the plaintiff, the circumstances stated by Dr. Hobart, of his opposition to the deponent from the first, on account of the plaintiff's not having consulted him, Dr. Hobart, and the bishop not having mentioned to him the subject; to which the plaintiff replied, no, nor I never will consult him, nor will I, when I have any business to bring before the church, go about beforehand electioneering as he does; and added that

It would be a very tedious business to go and consult every individual in affairs of this nature, before it was brought before them collectively. The deponent says, that he was a member of the theological society of the episcopal church in the city of New-York, from the early part of the summer of 1808 until July 1809, when he left the city. Plaintiff occasionally presided in that society, and he never heard him, either there or elsewhere, say any thing disrespectful of Dr. Hobart, except what is herein before stated.

The deponent, on being cross-examined, says, that when he first applied to bishop Moore, as herein before stated, he had no family, but married in July, 1806; when he first applied to bishop Moore, he told the deponent that he could have all the assistance that was necessary, and that he should be furnished with books from his library; and observed, that he supposed the deponent had something, to which deponent answered that he had; but nothing was said, as to the extent of the assistance, or the amount of the deponent's property. The deponent says that he had no previous acquaintance with bishop Moore, and that the only knowledge that he had of the deponent, so far as he knows, was from the aforesaid introduction of the plaintiff. The encouragement and promises which he received from bishop Moore, as herein before stated, were given and made without any inquiry, by bishop Moore, of the deponent respecting his moral character, and before the deponent proffered, as he did during the conversation, to produce testimonials of his character; there were inquiries made by bishop Moore, respecting deponent's literary qualifications. The deponent, on being required by defendant's counsel to produce a letter written by him to bishop Hobart, and referred to for an expression of his, in the deponent's direct examination mentioned, produces a letter, dated 29th November, 1808, a copy of which is hereunto annexed.

The deponent, on being again examined on the part of the plaintiff, says, that some time in the year 1808, he had an interview with bishop Moore, when the deponent renewed his offer to produce testimonials of his moral character, and bishop Moore remarked that there was no objection on that

score, but said, either at that time or in a subsequent conversation, that the deponent was too old; and that there was an objection on account of the letter which the deponent had written to Dr. Hobart; at the same time informed the deponent that if the standing committee would pass him, he, bishop Moore, would not have any objection. The deponent never made any application to the standing committee, but has understood that the plaintiff did bring his case before some collective body, and produced documents there, but to whom he does not know, and further he saith not.

*Copy of a letter from Dr. Montross to Dr. John H. Hobart,
dated*

November 16th, 1808.

Rev. Sir,

The inquiry whether it would be most expedient to afford me assistance to qualify myself for orders, or to apply all your funds to the education of boys, for that purpose, does not appear to me to be the one which justice dictates. Were I to act on a similar occasion, I would inquire whether any promise had been made to the person, and what injury he had suffered in consequence of its being withheld.

A promise of whatever aid I would need was made to me, and I have suffered much in consequence of its being withheld.

In consequence of this promise, I parted one hundred miles from my friends and my business, and came to this place, where I could hope for neither of them. My acquaintance here did not amount to six persons, and from them I could expect nothing. I have lived here a year and a half, without business or help from any one. The little which I brought with me is gone. My misery is now complete. There are no curses in this world that can add any thing to it—it is that of a wounded spirit. Were I an unconnected individual, my pride would repress complaint; but it is extorted by the tears of her, whom I have taken from opulence, and dragged down with me into the depth of poverty.

I knew enough of the world to look for disappointments from mere worldlings; but that members of a *christian* society would deliberate about the *expediency* of fulfilling *their promises*, is what I did not anticipate.

Had I experienced the repulse on my first application, which I have since, happy would it have been for me. But to assume the charms of benevolence, and thereby raise expectations, and afterwards to blast them with cold indifference, is a demoniac kind of sport. A sport, however, of which I have been the victim. It is peculiarly so, when those on whom fortune has lavished her favours, play it upon those whom she has turned adrift to the buffetings of poverty.

New-York, ss. GEORGE WARNER, of the city of New-York, a witness produced by the plaintiff, being duly sworn, deposeth and saith, that he was formerly a member of Christ Church, and continued so until the spring of 1809, when a misunderstanding took place between the rector, the rev. Mr. Lyell, and some of the congregation, when the deponent and a number of others, to the amount of one hundred and fifty or two hundred, withdrew from that church; this happened three or four Sabbaths before Dr. R. C. Moore was settled in St. Stephen's, and before he had accepted of the call from that congregation, and without his knowledge. The deponent says, that when it was understood that Dr. R. C. Moore was about to be settled in St. Stephen's, the deponent and a number of others, who had belonged to Christ Church, determined to attach themselves to St. Stephen's, if Dr. Moore was settled there. After Dr. Moore had accepted the call to St. Stephen's, and had arrived in this city, deponent requested such of the former members of Christ Church, as intended to join St. Stephen's, to meet Dr. Moore at the house of Mr. Scott, in the city of New-York, which they accordingly did: the meeting was called in order to give those persons an opportunity of becoming acquainted with Dr. Moore, and to have a conversation with him previous to their joining in the communion of the Lord's supper at St. Stephen's, which was to take place a few days

after. The meeting was called with the privity of Dr. Moore, on the suggestion of the deponent, on account of there not being sufficient time, before the sacrament, to afford him opportunity to become acquainted with those persons, by calling on them individually. Dr. Moore disclaimed all intention of persuading any to leave Mr. Lyell's congregation. Deponent thinks that he is better acquainted with the aforesaid transaction, than any other of the congregation; and he says, that he does not know, nor has he any reason to believe, that any means were taken by Dr. Moore, or any one on his behalf, to induce any one person to leave Christ Church, and to join St. Stephen's. Deponent says, that Dr. Moore knew nothing of the separation of the aforesaid persons from Christ Church, or of their intention of doing so, until it was communicated to him by the deponent.

On being cross-examined, he says, that he supposes that there were about one hundred persons who attended at Mr. Scott's as aforesaid; he thinks that about ninety of that number had belonged to the congregation of Christ Church, and about sixty of them joined St. Stephen's at that time. Dr. Moore made a religious address to that meeting.

Being again examined on the part of the plaintiff, deponent saith, that before Dr. Moore accepted the call at St. Stephen's, several of the persons who, with the deponent, had separated themselves from Christ Church, as aforesaid, had connected themselves with other churches; and he is well convinced that those persons who had left Christ Church, and joined St. Stephen's, would have connected themselves with some other church, if Dr. Moore had not been settled in St. Stephen's; and further the deponent saith not.



THE arbitrators having determined to receive the preceding depositions, &c. as testimony, and to reject the answers of the rev. Dr. Beach, and Mr. Isaac Lawrence, in consequence of their not having been examined previous to the 15th of July,

Mr. EMMET rose, and said, that it probably would be urged by the opposite counsel, that bishop Provoost received his authority from the state convention. He should contend, that the authority of the bishop, in this country, was derived from the house of bishops. That with regard to bishop Provoost, he received his from the bishops who consecrated him, and not from the convention.

He added, that he should now read the several authorities on which he should rely, and to which he intended to refer, in the course of the argument hereafter to be presented by him to the arbitrators.

“ Whence it is manifest, that as the christian church was governed by the three orders of apostles or bishops, priests and deacons; so the *supreme authority* was lodged in the superior order of the apostles or bishops, from whom the priests and deacons derived their power, and without whose consent they could not lawfully perform any religious act.” *Hobart's Festivals and Fasts*, p. 21.

“ If then it appears from their writings” (viz. of the fathers) “ that *episcopal governments universally* prevailed in the primitive ages; that there were three orders of the ministry constituted by Christ and his apostles, viz. bishops, priests and deacons; that the first order alone possessed the power of ordination and *supreme authority* in the church; this *testimony of the fathers*, united with the arguments already adduced from scripture, will constitute *an unanswerable proof*, that episcopacy is founded on divine authority.” *Ibid.* p. 25, 26.

“ From the foregoing view of the constitution of the church, it results, that the church is a visible society, regular and well organized, spiritual and distinct from the world; that the christian priesthood, exercising powers that are purely spiritual, can derive its authority only from God; that therefore it is necessary that some mode should be instituted for successively conveying *through all ages*, the divine authority which at first instituted the priesthood; that Christ, as the supreme head of the church, sent his apostles, as ‘ the Father had sent him,’ the instructors, priests and

rulers of the church; that the gracious promise which he made them, evidently implied, that the authority with which he invested them, was transmissive and to be continued, through their successors, ‘to the end of the world;’ that from the concurrent evidence of *the scriptures* and *primitive writers*, the first order of the ministry called bishops, were *successors to the apostles*, in the divine authority of commissioning others for the ministry, and *governing the church*.” *Ibid.* 35.

“There is and ever will be the same necessity of *prescribing rules* for the peace and *good government of the church*, and the order and decency of divine service, that there was in the apostolic age: and consequently there is the same reason why *this authority* should be transmitted to *the bishops* in *all ages*, as any other part of the apostolic office.” *Ibid.*

Mr. EMMET next called the attention of the arbitrators to the following authorities, tending to show, that the metropolitan in England, was similar to the house of bishops in the United States.

“I am here to show what were the offices and privileges of those who were properly metropolitans; and they were these that follow: First, they were to regulate elections of all their provincial bishops, and either ordain or authorize the ordination of them. No bishop was to be elected or ordained without their consent and approbation: otherwise the canons pronounce both the election and consecration null. The *Kupos* or *ratification* of all that is done, says the council of Nice, belongs to the metropolitan in every province. And again, if any bishop is made without the consent of the metropolitan, this great synod pronounces such an one to be no bishop.” *Bingham’s Antiquities of the Christian Church*, b. 2, ch. 16, sect. 12.

“The election of a bishop was jointly in the hands of the clergy and laity of the bishopric or parish, which became vacant; and Cyprian frequently acknowledges, that he was promoted to that honorable charge by the suffrage of the people. When they had elected a bishop, they presented

him to the neighbouring bishops for their approbation and consent, *without which his election was not valid.*" Broughton's *Hist. Dict.* v. 1, p. 159.

"It is ordered by the fourth canon of this council, that when any bishop was to be ordained, all the bishops of the province, where the vacant diocese lay, should come together to ordain him: and if some of them could not come, at least three should ordain him, and the rest *signify by their letters, that they approved the person; and that all should be ratified by the metropolitan.*' Whence it is manifest, that the consent of the metropolitan, and the majority of the comprovincial bishops was then required to the appointment of any bishop, before he could be ordained." *Bishop Potter on Church Government*, ch. v. p. 466, 467.

"Much we read of extraordinary fasting, usually in the church; and in this appeareth also somewhat concerning the chieftly of bishops. The custom is, saith Tertullian, that bishops do appoint when the people shall all fast. Yea, it is not a matter left to our own free choice whether bishops shall rule or no; but the will of our Lord and Saviour is, saith Cyprian, that every act of the church be governed by her bishops." *Hooker's Ecclesiastical Polity*, b. 7, sect. 6, p. 383.

MR. EMMET. Bishop Provoost having stated in his letter to the house of bishops, "that at a late meeting of the church convention, he resigned his *jurisdiction*, as bishop of the protestant episcopal church in the state of New-York," it becomes necessary to inquire what is the meaning, according to ecclesiastical authority, of the word "*jurisdiction*," as used by bishop Provoost? And for the purpose of elucidating this point, I would refer the arbitrators to Bingham's *Antiquities*, from which I shall now read an extract.

"Among the ancients, the words order, degree, office, power, and *jurisdiction*, when they speak of the superiority of bishops above presbyters, mean but one and the same thing, viz. *the power of the supreme governors of the church*, conferred upon them in their *ordination*, over presbyters, who

are to do nothing but *in subordination to them*. St. Jerome, who will be allowed to speak the sense of the ancients makes no difference in these words, *ordo*, *gradus*, *officium*, but uses them promiscuously, to signify the *power* and *jurisdiction* of *bishops* above presbyters and the whole church, which is, properly speaking, *the very essence of their order*.⁷¹ *Bingham's Antiquities*, b. 2, c. 1, sect. 1.

MR. EMMET. A question will also arise, whether a bishop can resign? And if he can, under what circumstances? On this point, I have no precise authority; but I have authorities which go to show, that if he can resign, it is in very rare cases; such as where a bishop is translated from one diocese to another; and that even in this case he cannot be *translated*, consequently cannot *resign*, without the consent of the metropolitan, which we say, is the house of bishops; and we contend, that the state convention in this country, is the same as the dean and chapter in England.

"As no clerk could remove from his own church without the licence of his bishop; so neither might any bishop pretend to *translate* or *move himself* to another see, without the consent and approbation of a provincial council. Some few there were who thought it absolutely unlawful for a bishop to forsake his first see, and betake himself to any other. But when a *synod of bishops* in their judgment and discretion thought it necessary to translate a bishop from a lesser to a greater see, for the benefit and advantage of the church, there was no law to prohibit this; but there are a thousand instances of such promotions to be met with in ancient history; "as Socrates has observed long ago, who has collected a great many instances to this purpose." *Bingham's Antiquities*, Book 6. ch. 4. Sec. 6.

"It was against rule that any bishop should desert one church, and *transfer himself* to another; and indeed against reason, such a relation and endearment being contracted between a bishop and his church, which cannot well be dissolved." *Barrow's Treatise of the Pope's supremacy*, vol. 1. p. 81 & 82.

✱ In places where the people had a share in electing their bishops; their election was void, unless it was approved, not only by their own clergy, but by the neighbouring bishops. For when Narcissus bishop of Jerusalem withdrew himself from his diocese; we are told that the bishops of the neighbouring cities agreed to ordain Dius in his stead. Some time after this, Narcissus returned from the wilderness, where he had concealed himself, and was reinstated in his bishoprick by the consent of all parties. But he becoming through his great age, wholly unfit to execute his episcopal office, the christians of Jerusalem prevailed upon Alexander bishop of Cappadocia to undertake the care of their church, as the coadjutor of Narcissus during his life, and afterwards to be their sole bishop. But this was not done *'till the bishops of the neighbouring cities had first consented*. Sometimes the churches of greater cities elected for their bishops, those who were bishops of lesser cities before: yet such persons were not allowed to change their dioceses, unless it was judged to be for the public benefit of the church—"by the judgment of many bishops," as we find it decreed in the Apostolical Canons. So that the neighbouring bishops at this time had authority *to disannul the elections* made by the people and clergy of any city, *even when the bishop elect wanted not ordination.*" *Bishop Potter's discourse on Church Government*, p. 465. See, also, Broughton's Historical Dictionary, p. 469.—Burn's Ecclesiastical Law, title "*Resignation.*" Ree's Cyclopædia, article "Church."

MR. EMMET. It may be contended, by the opposite side, that the conditions on which the house of bishops consecrated bishop Moore are null and void; because as he had been *electcd* bishop, they had no power to attach any conditions or limitations, whatsoever, to the act of consecration. I shall now read some authorities to show, that they had the power to limit, as well as to ratify the election.

"On that melancholy event" (viz. the death of bishop Rose) "the clergy of Edinburgh met to deliberate upon their affairs, and advise among themselves, whether it was proper

now to make any advance towards the choice of a successor; which having been the primitive mode, they concluded was their privilege, now the connexion of the church with the state, which had brought in another method, was dissolved. This was carried in the affirmative. Upon the 28th of April they had another meeting, when the instruments of consecration of the several bishops were laid before them by bishop Falconar, who in the name of his brethren, said, that though they were bishops of this church, intended for preserving the episcopal succession in it; yet they did not pretend to have jurisdiction over any *particular* place or district; and therefore advised them to pitch upon a proper person to take the management of their affairs. So the next day, they convened a third time, and with all the formality possible and proper for such a business, elected bishop John Fullarton to be bishop of Edinburgh; which was immediately accepted by him, and *ratified* by his three brethren; *with this limitation*, that he should not, as bishop of Edinburgh, succeed to the vicarious metropolitical powers, which bishop Rose had exercised, but should only have a privilege to convocate his brethren when the exigencies of the church required, and preside in such meetings." *Skinner's Ecclesiastical History of Scotland*, vol. 2. p. 628.

"Canon 5. That if the presbyters of any district shall happen to elect *a person already vested with the episcopal character*, the bishop so elected shall have no *jurisdiction* over that district, until his election be *confirmed by the majority of the bishops*: and if they shall elect a presbyter, of whose fitness for that office the bishops shall declare they have sufficient reasons not to be satisfied; in that case, the presbyters shall be required by the bishops to proceed to a new election."—*Ibid.* p. 656.

MR. EMMET. We contend that a *coadjutor* bishop has nothing to do with the spiritual powers of the church; that he has connection only with its temporalities: and that this is the difference between a *suffragan* and a *coadjutor* bishop. See bishop Gibson's *Codex*.

“ It was an ancient custom in the church, that when a bishop grew very aged, or otherwise unfit to discharge the episcopal office, a coadjutor was taken by him, or given to him: at first in order to succeed him; but in later times, only to be an assistant during life: in such manner however, that being ordained bishop, the whole care was vested in him.

“ We find three coadjutors in one commission, given by archbishop Peckham to the bishop of London; and the powers given are, to collate to benefices of the patronage of the see, to institute clerks presented by others, and to grant commendas canonicas in suis casibus, i. e. dispensations to hold a second benefice for a time without institution; the granting of which was in the power of the bishops; and they in fact frequently granted it. And, by another instrument, the same archbishop commits custodium sigilli to one of those three; with this limitation, that he should not set it to any institutions or collations, but with the consent of the other two.

“ But there was this remarkable in the appointment, that none of the three were bishops, but presbyters only: the discharge of the duties, merely episcopal, being probably undertaken by a suffragan bishop. In like manner as we find it in the diocese of Litchfield, under the same archbishop; who having required the bishop to provide a suffragan for the mere *spiritual purposes of the diocese*, enjoins him, in the same instrument, not to collate to any benefice.

“ By these instances it appears, that whatever the practice might be in ancient times, and in other countries; here in England, the two ends of orders and of jurisdiction voluntary, in the case of the inability of a bishop, were answered by two several persons; the first under the name of suffragan, and the second under the name of coadjutor. And though in subsequent times, we find little mention of the last; yet curators or coadjutors to the beneficed clergy in the like circumstances, have been very common both before and since the reformation, as will appear in the proper place. And the reformatio legum urges that by parity of reason, coadjutors ought to be assigned to bishops. Quem admodum

episcopi ministris inferioribus, cum jam vel propter morbum desperatum, vel propter senectutem, ecclesiam ministrare diutius non possint, adjutores apponere debent; sic etiam illis, ob easdem causas ab archiepiscopo dabuntur," &c. *Bishop Gibson's Codex juris Ecclesiastici Anglicani*, v. 1. p. 158.

"In case of any habitual distemper of the mind, whereby the incumbent is rendered incapable of the administration of his cure, (such as phrenzy, lunacy, and the like) the laws of the church have provided coadjutors. Of these there are many instances remaining on our books, both before and since the reformation; and we find them given, generally, to parochial ministers, as most numerous, but sometimes also to deans, arch-deacons, prebendaries, &c. and no doubt they may be given, in such circumstances, at the discretion of the ordinary, to any ecclesiastical person, having ecclesiastical cure and revenue.

"The powers conveyed are, first in general terms, the *office of a coadjutor*; and then in particular, the looking after the cure, the receiving of the profits, and the discharge of the burdens; with an obligation to be accountable to the ordinary, when called upon. But I think the article of *looking after the cure* is a late clause; having observed no more in the ancient appointments of this kind, even since the reformation, than *the administration of the revenues*; which therefore exactly answers to the account that hath been already given (p. 158) of coadjutors to bishops, as *appointed only to take care of the temporalities*. And, as there *the spiritual part* was committed by the metropolitan to a *bishop suffragan*; so here it was committed by the diocesan to a curate duly licensed. Not but the office of coadjutor to an incumbent was always committed to a clergyman; who therefore, if not engaged in another cure, might be content to take upon him the spiritual part also, and have it accordingly committed to him by the bishop; but this was no part of the office of a coadjutor, as such, which in the case of presbyters, as well as bishops, did anciently relate to *the temporalities only*." *Ibid.* vol. 2, p. 939, 940.

“ Here bishops are styled suffragans, in respect of their relation to the archbishop of their *province*; but formerly each archbishop and bishop had also his suffragan, to assist him in conferring orders, and in other *spiritual* parts of his office within his *diocese*. These, in our ecclesiastical law, are called suffragan bishops, and resemble the *chorepiscopi*, or *bishops of the country*, in the early times of the christian church. How this *inferior* order of bishops *may* be elected and consecrated, is regulated by the 26, Hen. 3, c. 14, but, notwithstanding this statute, it is not usual to appoint them. They should not be confounded with the *coadjutors* of a bishop; the *latter* being appointed, in case of the bishop's infirmity, to superintend his *jurisdiction* and *temporalities*; neither of which was within the interference of the former.” *Coke Litt.* v. 3, b. 2, note 96.

MR. EMMET. For the purpose of showing the usage of the church of England, in the election, confirmation, and translation of bishops, I refer the arbitrators to the following passages from bishop Gibson's Codex.

“ The dean and chapter (signifying to the prince the death of the former bishop) are to pray leave to elect another, as appears by the tenor of the conge d'elire. Though a licence from the king was necessary, *in acknowledgement of foundation and ancient patronage*; yet it was at the same time, *a matter of strict right*, and could not be denied.” *Bishop Gibson's Codex*, vol. 1. p. 126.

“ The election from beginning to end, proceeds, seemingly, upon the conge d'elire, without any appearance of restraint from the letters missive, and in the same manner as if there were no such restraint; and the only circumstance remarkable in it, is, the solemn declaring of the person elected, to the clergy and people, assembled in the church; wherein we see *the footsteps of the more ancient way of electing*, and of the part which they had in the election.”—*Ibid.* p. 127.

“ The archbishop to whom *the confirmation* and consecration of bishops within his province, *doth of right belong*. Confirmatio spectat ad archiepiscopum jure communi, saith

J. de Athon. And the rule of the canon law is, *Potestas sane vel Confirmatio, pertinebit per singulas Provincias ad Metropolitanum Episcopum: and, Extra conscientiam Metropolitanus Episcopi nullus audeat Ordinare Episcopum; and in terms yet stronger, Illud generaliter est clarum, quod siquis, præter sententiam Metropolitanus, fuerit factus Episcopus, hunc magna synodus (Nicen. 1.) diffinivit Episcopum esse not oportere.*—*Ibid.* 128.

“In case of translation, no more is required, than confirmation; but *that and all that precedes it*, is required and observed in case of *translations*, as much as in *creations*.”—*Ibid.* 129.

“The dignities or benefices which a bishop was possessed of before his election, become not void, till after consecration in the case of creation, and after *confirmation* in the case of *translation*.”

“Election is an incomplete act, which may be vacated many ways.”

“And it is observable, that though the act (25 Hen. 3, c. 5) besides the *penalty* of not electing, hath provided plain and immediate *remedy* for the advancement of the person recommended, in case the dean and chapter refuse to *elect*, namely, that he shall be presented by the king’s letters patents; yet in case of *election made*, and a refusal to confirm, there seems to be only a *penalty* on the person or persons refusing, *without other remedy*.” *Ibid.* 133.

MR. EMMET. For an account of ecclesiastical synods and their powers, I refer the arbitrators to *Broughton*, from which I shall now read a short extract.

“Provincial synods or councils, are those in which *the bishops* of one province only meet.” And one reason assigned for it is this; that if any clergyman chanced to be unjustly censured by the passion of his bishop, he might have recourse to a superior court, and there have justice done him.

“National synods are those in which *the bishops* of one nation are assembled.” When the world became divided

into several kingdoms, it was found necessary, that all the churches of such or such a nation, should, for the sake of unity, and to avoid confusion, observe the same customs and usages. Hence national synods or councils were instituted, whose decrees were obligatory on all the churches of particular nations or kingdoms." *Broughton's Hist. Divt.* vol. 2, p. 417.

MR. DAVID B. OGDEN.

May it please your honors,

THE manner in which this cause has been opened has excited an embarrassment that I have never before felt. To accompany the gentleman through the wild, unconnected, and tedious course he has pursued, would be carrying me where I thought he ought to have gone, and where I am not inclined to follow him.

Nor do I consider it necessary to notice the charges and insinuations which he has made against bishop Hobart and Trinity Church. There are, however, some points in his speech which I am willing to admit.

I admit that Trinity Church is rich and respectable; and I admit, although I do not know the fact, that Mr. Jones is poor; but, does it follow that because Mr. Jones is poor, he has a right to scatter the seeds of discord and dissention in the church, and to break up her peace and repose?

I admit that Mr. Jones is a native of the city of New-York. And is this to be urged as an apology for his assailing the ministers of the church, rebelling against her solemn decisions, and endeavouring to annihilate her tranquillity and happiness? The case is similar to that of an unruly child, who enters his father's house, commences the destruction of its furniture; and when reproved for his wanton conduct, replies, it is the mansion of my father; and I will, therefore, ruin and waste its furniture. Will such a justification be admitted by the arbitrators?

I shall proceed to notice the points in dispute; and request the attention of your honours to the words of the bond entered into between the vestry of Trinity Church, and Mr. Jones, which I will now read.

“ And, whereas the said rector and inhabitants, and the said Cave Jones, have agreed to submit the said action, and all other the matters which could properly be discussed in a court of justice, in any suit or action between them, the said parties,”* &c.

These words show, conclusively, that if a court of justice would not set aside the proceedings which have been had against Mr. Jones, the arbitrators have no right to do it.

The first question that I shall discuss, is, whether a court of law would interfere to set aside these proceedings? Upon this point, I contend that every religious society in this country, have a right to make their own internal regulations. The episcopal church have established a constitution and code of laws for the government of their congregations and their priests. Nor has this right ever, before, been called in question. The plaintiff, by his various acts, has given his assent to them, and is as much bound by them, as he would be in a criminal case, by the laws of the land.

By a reference to the form of ordaining priests,† the arbitrators will perceive that Mr. Jones was not only bound by the most solemn promise, to obey those in authority over him, but he was also to obey the canons of the church. Among others, the 32d‡ will now be examined by me.

By this canon, the bishop and his presbyters are made judges of the fact, whether a controversy does exist? And whether it is of such a nature, and “ has proceeded such lengths, as to preclude all hope of its favorable termination?” In the latter case, they are to declare the terms on which the minister shall be separated from his congregation.

* See p. 13.

† See p. 19.

‡ See p. 21.

In the case under consideration, the bishop and his presbyters, these judges of the parties own choosing, have declared,

Firstly, that a controversy did exist.

Secondly, that there "was no hope of its favorable termination," and

Thirdly, the terms on which a separation should take place.

What then is the nature of this arbitration? It is an appeal from this decision to a court of justice; and this appeal is made, on the part of Mr. Jones, in violation of his most solemn obligations. It is an effort to bring the authority of the church into contempt. It is an effort to bring the peace and harmony of every order of christians into scorn and ridicule. If any man doubts this fact, the result of the present controversy will, unfortunately, remove such doubts. If Mr. Jones has suffered, I would to God he had, after the manner of his Redeemer, suffered in silence. That he had thought more of the peace and prosperity of his church, and less of filling his pockets.

It is a rule in common law, that a court will not set aside an award of arbitrators, but for corruption or mal-practice. In this case there is no charge of corrupt conduct. The bishop and his presbyters have fairly and impartially decided the question. Why then are your honours called upon to interfere? As there is no established church in this country, there are no general laws applicable to the subject. And I submit to the arbitrators, whether, where there is no violation of the peace; no violation of a contract, the civil courts have a right to interfere, and set aside proceedings like those which have been instituted against Mr. Jones?

What is the act complained of by this man? That the bishop and his presbyters have suspended him from the exercise of his functions, as a minister. Have any civil court in this country the power to restore him? Can they say, that he shall enter the church and perform those duties, which his superiors in that church have said he shall not perform?

That courts of common law will not interfere with the decisions of ecclesiastical courts, will be seen by a reference to Bacon's Abridgment.*

If it shall appear to your honours that a civil court have no right to set aside the decision of the bishop and his presbyters, then it follows, according to the bond already alluded to, that the present arbitrators have no such right.

But it is said, that the 32d canon cannot apply to the case of Mr. Jones, because it was made subsequent to his contract with the vestry of Trinity Church. To this, I answer, that Mr. Jones, when ordained, promised, "reverently to obey his bishop and other chief ministers, who, according to the canons of the church, might have the charge and government over him." Besides, the canon expressly declares, that it shall apply "in cases of controversy between ministers, who *now*, or *may hereafter* hold," &c. And to this Mr. Jones consented. But this canon did not introduce any new law. It was a mere declaratory act of what was the law of the church. And for the purpose of illustrating this point, I shall now read "the letter of institution, as given by the the bishop;"† passed at a convention, held in the state of New-York, on the 6th of October, 1802. This letter of institution shows, two years before the 32d canon was passed, what was the law; and for this office of institution Mr. Jones voted, thereby acknowledging it as the law of the church. In 1804, the 32d canon was passed, and was, as already remarked, merely declaratory.

The next objection is, that the usage of Trinity Church was at variance with the canon, and therefore, that it could not be applied to the case of Mr. Jones. I say, that the exception in the canon is, "that it shall not be obligatory upon the church in those *states* or *dioceses*, with whose usages, &c. it interferes;" and that it is not intended to apply to a *particular* church, such as Trinity Church, within a diocese; but that it evidently means the *whole* church within "a state or diocese."

* 1st Bac. Abt. title Eccl. Court E.

† See p. 18.

We have been told, in the third place, that this canon did not apply, because no difference or controversy existed between Mr. Jones and the congregation: and that it was a mere personal dispute, between Mr. Hobart, Mr. How, and the plaintiff.

Can it be supposed that it was the intention of the convention that passed this canon, that there should be an absolute quarrel between the individuals of the congregation, and their minister, before it could be applied to their case? Suppose Mr. Jones had become so unpopular, no matter for what reason, that the congregation would not go to hear him; would not this be a sufficient cause for dissolving the connection? And were not the bishop and his presbyters competent to judge of the fact? But to show that there was a difference, I refer the arbitrators to the testimony of Mr. King.* From the answers of Mr. King, who was one of the wardens of the church, it is evident that divisions did exist in the congregation. And the arbitrators will here observe, that the 32d canon speaks of divisions between rectors and assistant ministers, and their congregations. I would also refer them to the depositions of different witnesses,† to show, not only that this dispute existed; but that it was produced by the publication of Mr. Jones's book, entitled, "*A Solemn Appeal*."

But, Mr. Jones, in his letter to the vestry, dated the 4th September, 1811,‡ speaks "of the unhappy differences existing in the church." If he considered the controversy as merely personal, between himself and Mr. Hobart, he certainly would not have used these terms. And why would he, in the same letter, have said, "that there was an unfeigned desire, on his part, to restore harmony to the church?" Now, I ask the arbitrators, after this language on

* See answers of Mr. King, p. 253, 254.

† See depositions of Rev. R. C. Moore, p. 156. Mr. Clark, p. 204. Mr. Kingsland, p. 210. Mr. Kemper, p. 211. Mr. Rogers, p. 214. Mr. Ogsbury, p. 216. Mr. Swords, p. 219. Mr. Laight, p. 224. Mr. Bowden, p. 243.

‡ See p. 27.

the part of Mr. Jones; after thus admitting, that there was a want of harmony in the church, how can he now come here and declare, that there was no controversy between him and the congregation?

Mr. EMMET. The gentleman has not taken the force of the objection, as I intend to urge it. If there was a controversy between Mr. Jones and the congregation, then I contend, the *congregation* should have made the complaint, and not the *vestry*.

Mr. OGDEN. And who are the congregation? Through whom are they to act? most assuredly through the vestry? and unless it is through that channel, they cannot act.

The fourth objection is, that the 32d canon is a violation of Mr. Jones's contract with Trinity Church; and therefore, that it cannot be applied to his case. And, the gentleman has added, Trinity Church have shrunk from this investigation. It is true; they have shrunk from it. And why? Because they thought the interests of religion would not be subserved by it. Because they thought the honour, the prosperity, and the peace of the church would be injured. Nor would they consent to a reference, until they found Mr. Jones was determined to bring the subject before a civil court. Then it was that they agreed to submit the matters in dispute to the present arbitrators, in the fond expectation of smothering discussion. They did hope that this, I had almost said disgraceful controversy, might have been thus hidden from the public eye.

I now request the attention of your honours to Mr. Jones's letter of call.* This is the contract of which so much has been said. And what is it? It contains nothing about conditions. All that is said is, that he is called "upon the same terms on which the other assistant ministers are placed." And what are those terms? Mr. Jones cannot now be permitted to say, that he was ignorant of them.

* See page 24.

The arbitrators will observe, that the charter speaks only of an assistant rector.* Now I contend that Mr. Jones was not the assistant rector, because, the charter provides for only one officer of that description. Besides, the assistant rector must be named by the rector; and Mr. Jones never has been so nominated. But admitting that he was assistant rector, then, agreeably to the charter, "for cause reasonably proved, he may be displaced by the said rector for the time being, by and with the consent of the said vestrymen, or any eleven or more of them." In confirmation, however, of the idea that the office of assistant rector is different from that of assistant minister, I would refer your honours to the case of the rev. Dr. Beach,† who was, on the 11th of March 1811, nominated by bishop Moore, assistant rector of Trinity Church. From this I infer, that if Dr. Beach had been previously considered assistant rector, there would have been no necessity for this nomination. Since that period, Dr. Beach having left the city of New-York, Dr. Hobart has been regularly called.

By the testimony of Mr. Dominick,‡ it is intended to prove, that Mr. Bissett was called for life. And how does this deposition prove that fact? It only goes to show that the vestry were anxious to avoid a public investigation; that they were unwilling to act unkindly; that they were anxious, as far as practicable to rescue from ruin the reputation of Mr. Bissett; that they conducted towards him, as they have towards Mr. Jones, with tenderness and humanity: and if I am not greatly mistaken, the time will come, when Mr. Jones will sorely repent, that he had not followed the example of Mr. Bissett.

The gentleman has contended that the resolution of the vestry on the 5th of Sept. 1811, admits that Mr. Jones could not be removed. Now I assert that this resolution expressly declares, that "from the nature and terms of the engagement between the vestry and the rev. Mr. Jones, there can be little doubt that the same may, for sufficient cause, at any time

* See page 22.

† See p. 22.

‡ See deposition of Mr. Dominick, p. 125.

be dissolved by either party.”* Suppose, then, the vestry had dismissed Mr. Jones, immediately, as they had a right to do: Should we not have heard, with increased din the cries of this man, that he had been cruelly and unjustly persecuted? We certainly should, and the vestry understood it, and therefore, were determined to avoid that course.

The 30th canon recognizes the power of the vestry to remove Mr. Jones; but says, “ he shall not be dismissed without the concurrence of the ecclesiastical authority of the diocese or state.”† If, then, it was in the power of the vestry, thus to have dismissed Mr. Jones, why did they not do it? The reason is obvious. They wished him to have a fair and impartial trial by his peers. They wished to be free from the charge of having acted hastily, or intemperately; or with evincing a disposition to harrass or persecute him; and, therefore, they referred the subject to the bishop and his presbyters; a tribunal, where justice to all parties might reasonably be anticipated, and this tribunal have accordingly decided the controversy.

Suppose it to be true, for the sake of argument, that the contract with Mr. Jones was for life. What then? Can it be possible, that after he has been suspended, by the bishop and his presbyters, from the power of performing the functions of a minister, he has still a right to demand from the vestry his annual salary? I repeat it, after he has, by the most wanton and unprovoked conduct, brought down upon his own head, an exercise of the ecclesiastical authority of his church, who have suspended him from the power of performing the duties of a minister, shall he be permitted to demand; modestly demand, the payment of his salary? But it has been said, and will again be repeated, perhaps, that we have been the cause of his suspension. To this, I answer, that the contract with him was, that he should so demean himself as not to merit, much less to experience such an evidence of the dissatisfaction of his church. He promised that “ he would maintain and set forward, as much as possible, quietness,

* See p. 20.

† See page 5.

peace and love among all christian people, and especially among those that were committed to his charge."

A fifth objection is, that bishop Moore was not competent to set on this trial, inasmuch as bishop Provoost was diocesan. I shall show that there would be as much propriety in pronouncing me diocesan, as in saying that bishop Provoost filled that office.

Let it here be remarked, that Mr. Jones, with a full and perfect knowledge of all the circumstances, has recognized bishop Moore as his true and lawful diocesan. By the 2d article of the constitution of the church, it is provided, that the bishop shall have authority to call conventions. On the 20th of March 1811, bishop Moore, addressed a letter* to the rev. Dr. Hobart directing him as secretary to call a special convention. In the performance of this act, bishop Moore exercised the highest authority that the bishop of the diocese could exercise. The state constitution of the church, in the 6th article provides, that the secretary shall notice every member of the meeting of the convention, and specify for what purpose such meeting is to take place.

Mr. Jones, in his book entitled "*A Solemn Appeal*," admits that he knew the object of the convention which was to be held on the second Tuesday of May 1811. He not only knew that this call was made by bishop Moore, but he also knew the purpose for which the meeting was to take place. Now, then, I ask, if bishop Moore was not duly qualified to call a special convention; if he was not diocesan, how came Mr. Jones to attend it? How came he to do so absurd a thing as to attend a convention, called by an assistant bishop, for the purpose of electing another assistant bishop? And this too, after the publication of his "*Solemn Appeal*." We find him then, knowing that bishop Moore was not diocesan, according to his own declarations, attending an unauthorized convention, and that held for the purpose of electing a man, as he says, every way unqualified, and unworthy the office. This admission, alone, is sufficient to establish the opinion of Mr. Jones, as to who was diocesan; an opinion which he

* See page 25.

would yet have entertained, had not his learned counsel enlightened him on this subject. On this branch of the argument, I refer the arbitrators to the "*Solemn Appcal*," p. 7, 38, 39, 46, 47, 62, 63 and 66—and in p. 78 Mr. Jones speaks of bishop Moore, "as his worthy and much beloved diocesan."

By the 1st canon of the state convention, passed in 1802, provision is made for the trial of clergymen. The 2d canon prescribes the manner of trial; and the 3d the nature of the sentence which may be inflicted.

I shall now show, that in 1809 this very plaintiff, who never considered bishop Moore as his diocesan, did present a fellow clergyman, Mr. Ireland, had him tried, sentenced and degraded. The original of this presentment is in the hand writing of Mr. Jones.* I would here beg leave to observe, that this Mr. Ireland is now one of Mr. Jones's warmest friends, and a principal evidence on which he relies, in the present controversy.

This presentment declares, that by the 31st canon of the church, "every minister shall be amenable for any offences committed by him in any diocese, to the ecclesiastical authority of the diocese in which he resides. And that every trial of a clergyman shall be on presentment made to the bishop, by the convention, by the vestry of the parish to which such clergyman belongs, or by three or more presbyters of the church." In pursuance of this authority we find Mr. Jones presenting a brother clergyman. Now, I ask, how can he reconcile it to himself, that he should present Mr. Ireland before a mock tribunal? That he should arraign him before an assistant bishop, whom he knew was not canonically competent to examine into, and decide on the charges which were exhibited. How can Mr. Jones, as a christian, palliate or justify such conduct? But I have no doubt he believed, as every other episcopalian in the state believed, that bishop Moore was lawfully the diocesan: and I trust, before I finish, that I shall convince the arbitrators he thought right.

* See *rev. Mr. Bowden's deposition*, p. 43.

The episcopal church in this state have, uniformly, from the resignation of bishop Provoost to the present period, acknowledged bishop Moore as their diocesan. In May 1811 the whole church, without an exception, recognised him as such. There was not a single congregation in the state that did not send delegates to that convention; and among those who attended were Mr. Harris and Dr. R. C. Moore. They all knew that the convention was called by bishop Moore; in doing which he exercised the highest prerogative of a bishop, and they knew the object for which it was convened. If they did not consider him diocesan, why did they not protest against his summoning them? And against the convention proceeding to business, under that call, after they had met?

It is admitted on all hands, that since the resignation of bishop Provoost, down to November 1811, he never did perform, or attempt to perform, any act as bishop.

By a reference to the journals of the convention, from the year 1802, to the present period, the arbitrators will find that the convention, at their opening, have regularly acknowledged bishop Moore as bishop diocesan. And here I will make a general observation, and I defy contradiction, that from the time of bishop Provoost's resignation, until this controversy, there never was any act of the church, or of any congregation, or of any minister, recognising bishop Provoost as diocesan. But that on the contrary, from the time of bishop Moore's consecration, to May 1811, there was no act that did not recognise bishop Moore as bishop of the diocese *de facto et de jure*.

I think that it must be admitted, even by our adversaries, that during the whole of the period alluded to, bishop Moore was the bishop *de facto*, if not bishop *de jure*; and I aver, that the acts of an officer *de facto* are binding.

Let us then inquire whether bishop Moore is not bishop *de jure*? And here I would submit to the arbitrators, whether, inasmuch as there is no established church; no ecclesiastical court, it does not follow, that the regulations of the respective churches are to be exclusively adopted by themselves, without the interference of government? I contend, that we

have nothing to do with the laws of the land. Can it be possible that every other denomination, have a right to settle the disputes among their ministers and congregations, without the interference of civil law; and that the episcopal church alone shall be considered as differently situated? Nor are we to resort to the government of the church of England, to determine the power or extent of authority of the episcopal church in the United States. Suppose a sect of dissenters should rise up in England, who would not have a bishop, would you, in such a case, test any dispute among them, according to the laws of the established church? or according to the rules and regulations of their own particular sect?

The fourth article of the constitution* of the church, passed in 1789, provides, that the conventions of the different states, shall elect their bishops in conformity to such rules as they may respectively adopt. There is no power relative to this subject, given to the general convention; nor is any recognized. On the other hand, the general convention appear to have fallen into an error respecting the power of the house of bishops. As a house of bishops they possess no power. They are only one branch of the legislative body, while the lay and clerical deputies constitute the other. The 3d article of the constitution† is explicit on this point. They do not consecrate as a *house of bishops*. It is done in their individual capacity, and any *three* of them may perform the act.

I contend, that inasmuch as the bishop is elected by, and receives his temporal authority from, the state convention, he must resign that authority to the body from whom he received it. But the gentlemen on the other side, say no; he must resign to the house of bishops. Is there any law or regulation of the church, which requires that the resignation should be made to the house of bishops? I assert, that there is not. What was the opinion of bishop Provoost himself on this point? That opinion cannot be more clearly demonstrated, than by a reference to his letter of the 7th of September 1801,‡ addressed to the house of bishops, in which he says,

* See p. 32. † *Ibid.*

‡ See p. 40.

"I *resigned* at the late meeting of our church convention, my jurisdiction, as bishop," &c. Here, then, we find that bishop Provoost, so far from considering the house of bishops as the legitimate body, to whom he should resign, actually resigning to the state convention.

By a reference to the Journals of the Convention,* we find also, a resolution, declaring, "that they return their thanks to the bishop for his kind wishes, and whilst they regret that he should have judged himself under the necessity of quitting so suddenly the exercise of the episcopal office," &c. And immediately after, they proceed to the election of Dr. Moore, as bishop of the church in this state. Thus, the acts of the parties are complete. One having resigned, and the other having accepted the resignation. Bishop Provoost, in his letter to the house of bishops, does not pretend to resign to them. This communication appears to have been intended as a mere matter of courtesy, by informing them he had actually retired from all controul or jurisdiction over the diocese.

And, whatever may have been the opinion or proceedings of the house of bishops, when the letter of bishop Provoost was first presented them, they appear afterwards to have abandoned the ground they had originally taken. And this cannot be placed in a stronger point of view, than it is by the certificate of consecration given to bishop Moore. The house of bishops proceed to consecrate bishop Moore, to use their own language, "into the office of bishop of the Protestant episcopal church in the state of New-York; to which the said Benjamin Moore, D. D. hath been elected, by the convention of the state, in consequence of the inability of the right rev. bishop Provoost, and of his declining all episcopal jurisdiction within the said state." Thus, it appears, he was consecrated into the office to which he had been previously elected by the convention; and it would seem, that this must have been done by the house of bishops, under a conviction that their first opinion was incorrect and unfounded. Nor had they any authority to make an enquiry,

* See p. 38.

of the nature contended for by the gentlemen on the other side.

If the house of bishops, in their proceedings, meant to say, that a bishop could not resign his *temporalities*, much as I venerate and respect them, I am compelled to declare, that their opinion is directly in the teeth of a number of cases. But if they intended to be understood as saying, that he could not resign his *spiritualities*, then they are certainly right.

I shall cite a few cases, merely to show that the house of bishops never could have meant to say, that a bishop could not resign his temporalities. Eurnet's History of the Reformation,* will, I presume, be deemed good authority on this point; and Blackstone,† also, takes the same ground, adding that the resignation must be to the metropolitan. When I speak of temporalities, I mean his care over the churches, and his connection, in general, with a particular diocese. These are regulations solely dependent upon the state convention, and may be resigned to those who delegated the power or authority. For instance, bishop Provoost is, at at this moment, canonically authorized to perform any spiritual act, such as consecrating, confirming, &c. notwithstanding he has resigned the jurisdiction of this diocese. In like manner, a clergyman cannot resign his office as *clergyman*; he cannot divest himself of that character: but, he may, at pleasure, resign his care of any particular congregation.

In England, the bishop is elected by the dean and chapter; but he must resign to an arch-bishop: and from this circumstance, the opposite counsel contend; that, although in this country, the state conventions elect, yet the resignation must be made to a higher authority, which, they say, is the house of bishops. Let it be remembered, however, that the dean and chapter, in England, are mere nominal electors. They receive a *conge d'elire*, or order from the king, not only to elect a bishop, but also naming the person whom they are

* See Burnett's Hist. Rev. vol. 1, p. 205 & 308. Vol. 2, p. 242.

† Blackstone's Com. vol. 1, p. 382.

so to elect. Why then, is the resignation made to the king through the arch-bishop? Because, from the king the bishop derives all his temporal authority. In this country, that authority is derived from the state convention, and therefore, to the state convention must the resignation be made. It is admitted that bishop Moore had a right to act until forbidden by bishop Provoost. When does bishop Provoost interfere in the case of Mr. Jones? Not until after the proceedings had progressed so far, as to be beyond his controul! Even admitting, then, that he had the power, which I deny, of prohibiting bishop Moore from convening his presbyters, and adopting the course he did adopt, shall it be said, because bishop Provoost neglected to do what he might have done, that, therefore, the proceedings of bishop Moore are improper and illegal? Such a doctrine, I am persuaded, will never be sanctioned by the present arbitrators.

There a few observations more I shall submit on the point, who is bishop *de jure*? By a reference to the minutes of the state convention,* held in September, 1801, it will be found that the convention did not consider themselves authorized to act "while the church was destitute of a bishop." It may be objected, however, in the course of this controversy, that notwithstanding the convention alluded to, and the clergy of the diocese have uniformly acted as if they considered the resignation of bishop Provoost complete; yet that the question has never been fairly examined and decided upon. I shall now proceed, therefore, to show, that at a meeting of the convention,† held in October, 1812, this question was brought before them, on the application of bishop Provoost, and after mature deliberation, finally decided by them. And I undertake to say, that a more unanimous vote, on any question, where the shadow of doubt existed, seldom, if ever, has taken place. Now, what are your honours called upon to do, in the face of this solemn and almost unanimous decision? You are required by Mr. Jones to determine, that bishop Moore is not bishop diocesan, and that bishop Provoost is. Do the arbitrators believe

* See p. 38.

† See p. 49.

that they are more competent to decide a question, like the one at present under consideration, than an ecclesiastical court duly and canonically constituted? I am persuaded that they do not think so.

Having then established, first, that bishop Moore is bishop *de facto*, and secondly, bishop *de jure*, I shall proceed to examine the next objection which has been urged, and which was, that bishop Moore was a party, and sitting as judge and accuser. To this objection I reply, *first*, that he did not sit as *judge*, but merely presided, for the purpose of ascertaining the opinion of his presbyters, and carrying into effect their determinations. *Secondly*, that from the precarious state of his health, he has not been in a situation, for a long time, to attend the meetings of the vestry, and has not attended them. *Thirdly*, that bishop Moore, and I consider this conclusive, must *ex necessitate*, preside; because all irregular or improper conduct must be tried before the bishop and his presbyters, and if he could not sit, then none of the ministers of Trinity Church could ever be tried on any charges that might be exhibited against them. It is similar to cases at civil law, which might be enumerated, where parties interested may be witnesses.

Another objection is, that bishop Moore did not summon all his presbyters. By the constitution of the church of the state of New-York, article 3d, the convention is to be composed of *regularly settled ministers*. The 29th canon* of the general convention provides, "that no minister, who may be hereafter elected into any parish or church, shall be considered as a *regularly admitted and settled parochial minister*, in any diocese or state, &c. until he shall have been instituted, according to the office prescribed by this church." Now, I ask the arbitrators, taking these two articles into consideration, who are to be considered the bishop's presbyters? I contend, that it is those who "have been instituted according to the office prescribed by the church." If not, does a man who has been settled here a short time, thus become a presbyter? If that principle is recognized, then it follows,

* See p. 13.

that the bishop must ride about the state, to ascertain what transient ministers are within his diocese, for the purpose of having them summoned to any meeting of the presbyters that is to be held. But if my construction of the canons of the church is correct, then the bishop has summoned all his presbyters. There are a few, Mr. Jarvis, and four or five others, who were not summoned, because they had not been inducted into any church or parish. Mr. Lyell* swears that he summoned all the presbyters within the state, who were entitled to seats in the convention; and that the only resident ministers he did not summon, were Mr. Jarvis, Mr. D. Moore, Mr. Felch, Mr. Urquhart, and Mr. Burges.

The next objection is, that some of the presbyters summoned, were parties to the controversy. In one breath, the proceedings are pronounced irregular and illegal, because *all* the presbyters had not been summoned; and now the objection is, that *too many* have been summoned. How far these objections are consistent with each other, your honours will determine. As to the objection that Mr. How attended, and was a party, I reply, that the convocation was not for the purpose of trying any controversy between Mr. How and Mr. Jones: and although Mr. Jones may think, that by wantonly calumniating any of his brethren, he could disqualify them from a seat in the convocation, yet I am persuaded the arbitrators will think very differently. But again; if Mr. How was a party, was not Mr. Harris, Mr. R. C. Moore, and Mr. Feltus parties also? Has not Mr. Feltus published and acted precisely in conformity with Mr. Jones? I contend, therefore, that if the court was competent to try the case, the signature of Mr. How could not, in any event, vitiate the proceedings. If he was a party "*utile par inutile non viatur.*"

Another objection is, that all, or nearly all the presbyters, were pensioners of Trinity Church. True; I know that the bounty and liberality of that church has extended its benign influence throughout the state: that it has cherished and fostered our clergy in every hamlet and village; that it has

* See testimony of Mr. Lyell, p. 232.

unceasingly endeavoured to dispense the cheering consolations of the gospel, where, but for its interference, many christians would be deprived of that heartfelt happiness. But where would this doctrine land us? If it be true, as the gentlemen assert, that all the clergy are in the pay of 'Trinity Church, and that circumstance is to disqualify them from trying any of its ministers, does it not follow, that however improper or irregular their conduct may be, all attempts to investigate that conduct, would be vain and fruitless, because, a competent court could not be summoned within the diocese? It must be evident to every reflecting man, that such a principle is fraught with incalculable evils.

But it has been said, that Dr. R. C. Moore, when addressing the convocation, was interrupted, and was not permitted to proceed. What was the question before the bishop and his presbyters? They were called upon to decide, *first*, whether a controversy existed between Mr. Jones and his congregation? *Secondly*, whether a separation was necessary? and, *thirdly*, if it was necessary, on what terms it should take place? Any observations, therefore, not immediately connected with the subject under consideration, were irrelevant, and the party who attempted to make them, ought to have been interrupted. When Dr. Moore was interrupted, he was not speaking to the point, whether a controversy existed; but was entering into a detail of all the *causes* which had tended to produce the controversy, and which the bishop and his presbyters, no doubt, wished to avoid. The arbitrators will be pleased to recollect, that, until he finally broke off, he had not spoken one word as to the subject matter under consideration.*

I have now gone through, and I hope satisfactorily answered, all the objections which have been made to the proceedings in the case of Mr. Jones.

MR. COLDEN. You have omitted noticing the objection, that the presbyters had previously met, on the 5th of October, and determined the question.

* See Dr. Moore's speech, p. 164 to 169.

Mr. OGDEN. This objection has not been before urged; but I will now answer it. To this I reply, that from the testimony of Mr. Lyell, Mr. Bowen, and I believe Mr. Bowden, the arbitrators will find, that the meeting held in October was an informal meeting: that no secretary was appointed; no minutes kept, and that Dr. Beach was sent for to be present. Now I ask, would the judges meeting, previous to trying a cause, and talking over what was proper to be done, ever invalidate their proceedings as a court? But suppose it had been an informal court, and the bishop had thought it was only necessary to summon a part of his presbyters, and afterwards discovered, that all must be summoned, would this informality have disqualified those gentlemen from sitting on a court, subsequently held, being canonically convened?

I am now about to proceed to the only remaining point in this cause; and one that I enter upon with pain and reluctance. I mean the point of compensation. I regret most sincerely, the necessity of discussing this branch of the subject, because, I fear, I shall be compelled to use some remarks which may appear indecorous or harsh: but I shall endeavour to govern myself as far as possible.

Upon this point, it is to be taken for granted, that the suspension of Mr. Jones is correct and proper. It is to be taken for granted, that he has brought down upon himself all the troubles and vexations of which he so bitterly complains. It is to be taken for granted, that in publishing the "*Solemn Appeal*" he has sown the seeds of discord and distraction in the church, and that he is to be responsible for the crime.

In this publication, Mr. Jones could have had but two objects in view: *first*, to prevent the election of Mr. Hobart, or *secondly*, to defend his own character. If he wanted to prevent the election of an improper man, (as he asserts Mr. Hobart was) to the episcopate, he ought to have made his complaints to the convention and not to the community. If he was only anxious to prevent the election of Mr. Hobart, he cannot be justified in such a publication;—a publication calculated to excite unwarrantable prejudices and to inflame the public mind. If his motives were to prevent the election of Mr. Hobart, the system which he adopted was but little bet-

ter than that of a maniac. But may it please your honours, this was not the object. It was a mean and pitiful effort to excite public clamour, and to destroy the peace and repose of a man whom he envied and hated, but whom he dared not to arraign and face, before a competent tribunal composed of his equals.

It may be said that the "*Solemn Appeal*" was published in defence of his own character. But was Mr. Jones's character assailed? his own witnesses admit, that until after the publication of this fatal book, the misunderstanding was not known to more than four or five of the congregation;—that Dr. Hobart had always spoken in terms of respect of him;—that he had never assailed his reputation; and that whenever their differences were alluded to he had always expressed himself with regret. I aver, then, that Mr. Jones's character never was assailed, by bishop Hobart.

Mr. Jones, in the 5th page of his book says, "*I always loved him,*" &c. And he deliberately avows, that he noted down the conversations of the friend he "*loved,*" for the base purpose of destroying him. Now I assert, that a more pitiful; a more mean, and a more dishonourable course, never was pursued by one friend towards another.

The conversation which took place at the funeral of Mr. Walton, respecting Mr. Hobart performing the duties of Mr. Jones, while the latter was absent from the city, has been alluded to, and spoken of with some asperity. If such a conversation, at such a time, was criminal, who introduced it? Mr. Jones.—Who continued and carried it on? Mr. Jones. These trifling conversations, provoked by himself, Mr. Jones went home and recorded of his "*dearly beloved friend,*" evidently for the purpose of destroying his peace of mind, at some future period. But Mr. Jones never was the friend of Dr. Hobart; and I shall shew before I close, that his efforts have been uniform and persevering, to destroy his usefulness in the church.

I shall now shew, from Mr. Jones's own witnesses, that Dr. Hobart's conduct towards him, invariably, was fair and honourable. "That prior to 1808, Dr. Hobart took pains to pre-

vent the feelings of Mr. Jones from being hurt, by the manner of conducting the affairs of the church.”*

In another part of Dr. Harris’s testimony the arbitrators will find, that when Dr. Hobart found there was no hope of living in peace with this factious and restless man, he had formed the design of “quitting the city on account of the differences which he knew would arise with the plaintiff.”† I would also solicit the attention of the arbitrators to the testimony of the Rev. Dr. R. C. Moore, on this point. They will find that during seven years of the “strictest intimacy” between Dr. Moore and Dr. Hobart, “the latter was never heard to say any thing against Mr. Jones, or to speak of him in unfriendly terms.”‡ These are the two principal witnesses relied upon by Mr. Jones in the present cause; and yet, from the testimony of these witnesses, it is evident that anterior to the fall of 1808, Dr. Hobart never did speak in terms of disrespect of Mr. Jones, nor do any act, within their knowledge, not calculated to soothe and allay his envious and jealous feelings.

From an examination, however, of the testimony of other witnesses, on the part of the defendants, it will be seen that Dr. Hobart never did, to his confidential friends and companions—men to whom he could, with most perfect freedom, unbosom himself, speak in harsh or bitter terms of Mr. Jones, previous to the autumn of 1808; nor did “he endeavour, directly or indirectly, to diminish their regard for him.”§

I have now gone through the evidence of Mr. Jones’s principal friends, and shown that they never heard any violent or improper remarks from Dr. Hobart, anterior to the publication of the “*Solemn Appeal*.” And nextly, I have examined the testimony of Dr. Hobart’s most intimate friends and associates, and they unequivocally declare, that prior to 1808, they never heard from him an unkind or disrespectful

* See Dr. Harris’s testimony, p. 141. † Ibid. p. 142.

‡ See testimony of Dr. R. C. Moore, p. 158.

§ See testimony of Mr. Swords, p. 218. Mr. Prentice, 227 Mr. Wyatt, 231. Mr. Berrian, 234. Dr. Bowden, 224.

expression relative to Mr. Jones; but, that on the contrary, whenever the differences were alluded to, he invariably evinced feelings of regret. I ask then, was this pitiful book intended to defend his character? By whom had it been aspersed or assailed? I am warranted in saying, not by Dr. Hobart, nor is there the shadow of testimony to contradict the assertion.

But it may be said that Mr. Jones was offended and injured by Dr. Hobart, in their private conversations, and that this publication was intended, if I may use the expression, for the purpose of taking revenge. Where was his charity? Is it like a figure formed in ice, which, with a moment's heat is dissolved into water? I shall now take another view of the subject, setting the plaintiff and his ingenious counsel at defiance, to point out a single instance of hostility, on the part of Dr. Hobart, against Mr. Jones.

I propose to show, that from the moment Mr. Jones was introduced in the diocese, he has been industriously engaged in the honourable work of endeavouring to destroy the reputation of Dr. Hobart, and preventing his elevation in the church. The mode adopted by him, for this purpose, was to excite envious feelings, and the most unwarrantable prejudices against Dr. Hobart, by representing him as an inordinately haughty, and ambitious man. And for the purpose of establishing the fact, that such has been Mr. Jones's reputable career, I shall refer the arbitrators to the testimony of numerous witnesses, among others, Dr. Harris and Dr. Moore,* the particular friends of Mr. Jones.

I have now gone through the common declarations of Mr. Jones respecting Mr. Hobart: and I think I have shewn, that the plaintiff was scarcely settled in the diocese, ere he evinced strong symptoms of jealousy, and endeavoured to infuse them into the minds of others. Having progressed thus far, I must solicit the attention of the court to a deliberate and

* See testimony of Dr. Harris, p. 141, 142. Dr. R. C. Moore, p. 158. Mr. Clark, p. 203. Mr. Bulkley, p. 229. Mr. Swords, p. 219. Mr. Wyatt, p. 231. Mr. Wilkins, p. 240.

most outrageous effort, on the part of the plaintiff to assassinate the reputation of Dr. Hobart. In a conversation with Mr. Prentice, Mr. Jones so expressed himself, as to leave an impression on the mind of the former, "that Dr. Hobart had been guilty of the embezzlement of public money intrusted to him for a special purpose or had employed the same to the purchase of his own controversial writings, which was not the purpose to which it was intended to be applied."* It will be observed, that a more shameful and wicked attempt to stab the character of a man, than the one here spoken of, could not have been suggested by the most embittered and malignant heart. A short time after, Dr. Hobart hears of this transaction, and expresses no emotions of resentment, but regrets that his character should be so mistaken.

I now ask, was Mr. Jones an injured man, previous to the publication of his unfortunate book, the "*Solemn Appeal*?" Did he publish it with any view or intention of defending his own character? Or was it, under the influence of envious and jealous feelings, ushered into the world, for the vile and abominable purpose of destroying the peace and tranquillity of Dr. Hobart, and lighting the torch of discord and rebellion in the church? If to defend himself, where is the evidence that he had been assailed or injured? And by whom?

But it is said by Mr. Jones, that Mr. Hobart was ambitious. True; he possesses a laudable ambition. The ambition of doing all in his power to promote the welfare and prosperity of his church—the temporal and eternal happiness of his flock. It is his industry and zeal in that holy work that has excited the envy and hatred of the plaintiff.

It is said, that he was unwilling to be reconciled to Mr. Jones. The conduct of Dr. Hobart was uniformly dignified and honourable. Previous to the publication of the "*Solemn Appeal*" he was the injured man. After its publication, he considered the church as assailed; her discipline attempted to be trampled under foot: he witnessed her torn and distracted, by the indiscretion and wickedness of one who ought to have sought, unceasingly, the best mode to perpetuate

* See Mr. Prentice's testimony, p. 226.

ate her happiness and repose. He knew the refractory and rebellious heart of the plaintiff. Mr. Jones never dare avow the real object he had in view. Reconciliation with him, under such circumstances was impossible. Bishop Hobart's consecration vow forbade it.

But mark the hypocrisy of the plaintiff. He visits Mr. Wilkins, at Westchester, and endeavours to persuade him, notwithstanding his advanced age, seventy years, to become a candidate for the episcopacy. Finding, that Mr. Wilkins would not become his tool, he proceeds to Dr. Beach, and after flattering his feelings, he endeavours to make him believe, he was the only proper person, within the diocese to be bishop. In the autumn of 1803 Mr. Jones visits Mr. Prentice at Athens, and after representing Dr. Hobart as a hasty, ambitious, and ill bred man, unworthy of the ministerial office, undeserving of the confidence of the other clergy of the same connection, and as having been guilty of the embezzlement of public property,"* &c.—he proceeds to notice his friend Dr. Beach. And how does he represent this venerable prelate? "If bishop Moore, says the plaintiff, should drop off within a few years, Dr. Beach would undoubtedly, or probably, come forward with his claims to be bishop, but he is wholly unfit for the office and ought not to be elected."†

Now to what does all this amount? In the first place he endeavours to destroy Dr. Hobart's character, by the most profligate misrepresentations. In the next place, he pronounces Dr. Beach "*wholly unfit*" for the episcopacy. In plain English—I am the man. I am the only suitable and proper character to be bishop of the church in the state of New-York. The whole truth is, he was mortified, chagrined and disappointed, that he could not accomplish his ambitious views; that he should have been deemed totally unworthy that dignified and honourable office. But what will your honours think of a man who can thus wantonly and unnecessarily represent Dr. Beach, as "*wholly unfit*" for the office of bishop, and a few months after, puff him up, and en-

* See Mr. Prentice's testimony, p. 226. —† Ibid. p. 227,

deavour to persuade him to stand as a candidate for that very office?

But, let it be repeated, if Mr. Jones deemed the conduct of Dr. Hobart criminal or improper, why did he not arraign him, before the bishop, or the vestry? And the arbitrators will observe, that either course might have been pursued, under the canons of the church.

It is asked, what is Mr. Jones's offence? He has published a book!—yes; a fatal book, that has so uprooted the peace and tranquillity of the church, that I fear years of toil, on the part of its faithful labourers will not again restore it. But, they add, has not bishop Hobart published a book also? And where is the difference? Is there no difference between the assassin who assails me, and I who defend myself? Is there no difference between a man who basely vilifies and slanders his neighbour, and that neighbour, who is thus compelled to defend his own honor? I think there is; and I persuade myself this court will also think so. Bishop Hobart was bound, by every principle that is sacred, to protect and defend that character, which has become so valuable, not only to himself, but also to the church over which he has been called to preside.

But it will be said, that on the part of the vestry, there was no disposition to reconcile the existing differences. A reference to the testimony of Mr. King will show, in controvertibly, that from May 1811 to September following, there was no desire on the part of the vestry to press Mr. Jones; or on his part to submit to the discipline of the church.

We shall show, by the testimony, of Mr. Jones's own witnesses, that he disregarded the peace of the church, when put in competition with what he termed, his honour: If that could not be satisfied, no matter, if the harmony and prosperity of the church was forever torn up and destroyed. In a conversation between bishop Moore, and Dr. Harris in September 1811, the former expressed a wish that the latter should "persuade Mr. Jones to quit his connection with Trinity Church; and he said, that if the plaintiff would do so, he had no doubt but that the vestry would do something very handsome for him, and that he would use his influence

in order that they should." To which Dr. Harris replied, "that he was authorized to say for Mr. Jones, that he would pay a respectful attention to *any honorable terms* that the vestry of Trinity Church had to propose to him,"* &c. Now I contend that the vestry of Trinity Church, through bishop Moore, did endeavour, all in their power, to induce Mr. Jones to resign; that they did it, because the peace and harmony of the church was broken up and destroyed; and because they were apprehensive that it could never again be restored, while the connection between him and the church remained undissolved.

I shall show also, that if he has been reduced to poverty; if his family have suffered privations and pain, it is he that has produced them. He has sinned with his eyes opened. He was importuned and advised not to publish his "*Solemn Appeal*." The consequences were foretold to him; and he nobly made up his mind to meet them. Among those who "advised him to be very cautious how he published,"† were Dr. R. C. Moore, Mr. Van Wagenen and Mr. King.

To show the spirit with which this publication was made. To show the spirit with which the plaintiff was influenced towards bishop Hobart, I solicit the attention of the court to the testimony of Mr. Swords. In a conversation between Mr. Jones and Mr. Swords a short time previous to the publication of the "*Solemn Appeal*," the former remarks, "This young man (meaning Dr. Hobart) is aiming at the top of the ladder, and we must do what we can to pull him down, and show him in his true colours. If he is elected to the episcopate we shall have such a scene of tyranny exercised in the church, as has not been since the days of archbishop Laud."

It is then evident that Mr. Jones has not published hastily or unadvisedly. He foresaw that the repose of the church of which he was a member, was to be destroyed. He foresaw

* See Dr. Harris's testimony, p. 139. Dr. R. C. Moore, p. 154.

† See testimony of Dr. R. C. Moore, p. 157. Mr. Van Wagenen, p. 121. Mr. Swords, p. 219.

that the cause of his master—that the cause of religion was to be brought into ridicule and contempt. He foresaw that he would be suspended from the exercise of his functions as a minister; and foreseeing all these direful consequences he determined to meet them. They have followed; and why does he not meet them as a man? I am not destitute of mercy. I most sincerely pity his family. But if he does not feel for them, can it be expected that this court will? In remembering mercy, they will remember justice. It is avarice that has driven him into a court of law. It has taken full possession of his soul. It is only for the purpose of putting money into his pockets that he has come here. Will this court attempt to restore him? Impossible. An ecclesiastical court, canonically constituted, has determined that he shall not preach, and this court has not the power to say, he shall.



MR. WELLS.

May it please the court,

I shall not commence the argument that I am about to offer, with any promises of the moderation with which I mean to conduct it, lest I should give a pledge that in the ardour of discussion I might forget to redeem. When I advert also to the strong and reiterated assurances that was spontaneously made by the opening counsel in this cause, of the temperate course he meant to pursue in his argument, and recollect the manner in which their observance was neglected, it ought to afford me an additional admonition not to fall into the same error. If, however, catching the contagion of his example, I should at any time become extravagant; if my zeal should at any moment hurry me beyond the boundaries of reason and decorum, I will, at least, avoid being upbraided with the contrast between my own professions, and their performance: I will, at least, escape the reproach of being the herald of my own inconsistency. Without making any engagements then, upon this subject, I shall without further preface enter upon the examination which I propose to

make of the controversy submitted to your decision; and if I shall be able to discharge the duty I have undertaken in a manner, in any degree proportioned to the deep sense I feel of its importance, I hope I shall render some service not only to the church for whom I am concerned, but to the interest of religion itself.

The proceedings against Mr. Jones, which you are called upon to review, took place under the 32d canon of the general convention of the protestant episcopal church in the United States.* The view which I shall therefore take of this subject, will be to enquire :

1. Whether Bishop Moore and his presbyters had jurisdiction of the case on which they decided ?

2. If they had, whether their decision is not conclusive, so that neither the decision itself, nor the reasons on which it proceeded, can be examined into by any other tribunal ? except so far as relates to the compensation that was allowed to Mr. Jones, the consideration of which is opened by the terms of the submission.

3. Whether the compensation allowed by the bishop and his presbyters to Mr. Jones, ought to be altered ?

Under the question of jurisdiction a variety of others will necessarily arise. The first which I propose to consider is, who is the diocesan bishop of the episcopal church in this state ? That bishop Moore has, ever since his consecration, been in the full and undisputed exercise of the diocesan authority of the episcopal church in this state, has not and cannot be denied. As soon as he assumed the sacred office to which he was elected and consecrated, he entered upon all the powers and duties of the diocesan, and continued to exercise them without the least doubt being ever expressed of his right to do so, until it arose out of the present controversy. Thus has bishop Moore, during a period of more than ten years, been in the undisturbed exercise of the diocesan authority, and therefore, *de facto*, at least the bishop of the diocese. Now all the judicial and ministerial acts of an officer

* See the Canon, page 21.

de facto are valid,† and hence these of bishop Moore, as diocesan *de facto*, are as legal and valid as if he were so *de jure*. The distinction too between an officer *de facto*, and a mere *usurper*, is well understood: the former always acts under the colour of some competent appointment or election to the office he fills, whilst the latter depends upon the mere possession of the office acquired, without any pretence of right, but merely by a violent and fraudulent intrusion. Bishop Moore has uniformly acted as diocesan, in consequence of his election by the convention, and therefore his acts are entirely exempt from the imputation of being an usurper with which he has been charged in a manner as regardless of decorum as of legal precision. Alas! how little must the counsel know of the character of that learned and pious prelate, whose acts he has rudely termed usurpations, who is alike distinguished for his unaffected piety, his christian humility, and apostolic purity of life and manners. Though human infirmity has deprived the church of his active services, yet his example will, I hope, be remembered and followed: though time will e'er long gather him unto his fathers, his mantle will, I trust, be left behind to cherish and protect the followers of the cross.

I might here safely rest this part of the cause, and rely on the *de facto* exercise of diocesan authority by bishop Moore, acquiesced in, and confirmed for a series of years, both by the state and general conventions, as alone sufficient to uphold and establish the validity of the proceedings against Mr. Jones, by bishop Moore, as the diocesan. But I will not leave it on this ground: I mean to place it on a prouder eminence, and to show that bishop Moore is as unequivocally the diocesan *de jure*, as he has confessedly been so *de facto*.

In order to prove that bishop Moore is the rightful diocesan of the episcopal church in this state, I intend to establish the following positions: First, that bishop Provoost could resign his episcopal jurisdiction. Second, that he could resign to the convention of this state only. Third, that he

† 1. *Kyd on Corp.* 312 and 451, to 455 and the cases there cited.
1. *Woodes.* 314, 15. 6. *Johns. Rep.*

made such resignation, that it was accepted, and that bishop Moore was duly constituted his successor.

First then, as to the right of resignation. It is objected on the other side, that the character of bishop is indelible, and, therefore, that bishop Provoost could not resign his jurisdiction. The whole fallacy of this argument consists in not distinguishing between the *spiritual* character of a bishop and his *jurisdiction*. The former is indelible, because it is derived from God; but the latter is a mere incident or appendage to the former, derived entirely from human authority, and, therefore, in no just sense partaking of the indelibility which attaches to the former. The spiritual character of a presbyter is equally indelible with that of a bishop, and yet it is every day's practice for a presbyter to resign the care of one parish, and take upon himself that of another. What is this but resigning his pastoral jurisdiction over a particular parish or congregation? Suppose, after such resignation, that bodily infirmities or other causes should prevent his settlement in another parish, his spiritual character of presbyter would still continue, but his power, his authority, in other words, his jurisdiction over the parish he had relinquished, would cease, and their power to fill the vacancy would be unquestioned. The jurisdiction then of a bishop, is nothing more than an enlarged jurisdiction of a presbyter; the latter is confined to his congregation, whilst the former extends to his diocese. If one may be resigned, why not the other? Jurisdiction is the right of exercising human power or authority, either as respects the subject matter of it, or the territorial limits within which it is to be exercised. Hence it is evident that it is in its very nature a matter of human contrivance. The office of bishop and of presbyter are not of human institution: they are spiritual and derive their origin from the great author of our religion; but the place, the manner, and the circumstances, under which these offices are to be exercised, are entirely subject to human controul and arrangement. Whence did bishop Provoost derive his episcopal jurisdiction? Was it not conferred by the convention of this state? Whence does the rector of a particular parish derive his jurisdiction over it?

Is it not from the vestry of his church? To the spiritual character of a bishop, is superadded by the convention, his power and authority over his diocese, in like manner as is superadded to that of a presbyter, his power and authority over his parish. Jurisdiction is a matter of contract, and may, therefore, like all contracts, be dissolved by mutual consent. In the case of episcopal jurisdiction, the parties to the contract are, the convention on the one hand, and the bishop on the other. They confer the authority, and the bishop receives it: that authority is to be exercised according to the rules already prescribed, or that may be afterwards prescribed by the convention, to which the bishop, by his acceptance agrees to conform. And yet we are gravely told that this alliance, so evidently the result of mutual compact, is indissoluble: that the parties who could by their own volition create this connection, cannot, in the same way, put an end to it. Let us for a moment look at the consequences of this doctrine. The convention have the right to prescribe and regulate the duties of the bishop. Suppose they should require the performance of a course of duty, that the diocesan could not execute, either for want of leisure, or physical ability, or any other adequate cause, such for instance, as a visitation of all the churches within his diocese every three months. Now, if he can neither perform the duties assigned to him, nor resign his jurisdiction, in what a dilemma is both himself and the church involved! To act is impossible, to avoid acting, by resignation, is equally so. He must either do what he has not the capacity to do, or he is liable to be deposed for his default. To such absurd lengths would this doctrine carry us. Should it be said, that the case I have put is an extreme one, and that the convention, under such circumstances, would appoint an assistant bishop, I answer, that extreme cases serve to test a principle, and that, though the convention might appoint an assistant, yet they might also refuse to do so, and if the appointment were ever made, though it would obviate the inconveniences arising from a want of it, yet it would not prove that the diocesan could not resign. Again, the extent of a diocese is clearly dependant upon human regulation: it may be increased or di-

minated at the pleasure of the competent authority. Suppose the convention of this state should divide it into two dioceses, with a presiding bishop over each, would not the episcopal jurisdiction of whoever was then diocesan, be narrowed down to his own particular diocese? Would it not cease as to the other? If then it can cease for a part, it can cease for the whole; and this affords one of the strongest proofs, that jurisdiction flows from the convention, who are the granting and regulating power: that as they give, so they can limit or take away, and consequently receive back, and leads irresistibly to the conclusion, that jurisdiction being entirely of human institution, regulated by human ordinances, may, like all other human authority, be resigned into the hands that gave it.

There is nothing, therefore, intrinsically in the nature of episcopal jurisdiction to prevent its being resigned. Is it then prohibited by the scriptures, or by any of the canons of the church? Both, it is believed, will be searched in vain for such a prohibition: they are profoundly silent on the point; and, in such a case, the maxim of our civil jurisprudence is, in the language of lord Ellenborough, *silence is the highest eloquence*. What, in this respect, has been the practice and usage of our church? Our own country is too young, and the establishment of episcopacy in it, too recent, to have afforded any precedent on the subject: the only case of the kind, that has occurred, is the one to which this part of the present controversy relates. But if I can show that the resignation of bishops, received the sanction of the pure and primitive ages of the church, and is in common practice in England to this day, it will, I presume, be allowed to add some strength to the reasoning already advanced.

The translation of bishops from one see or jurisdiction to another, has been common in all ages of the church. Now, I would ask, how this can be effected without a resignation of the see or jurisdiction from which the bishop is translated? By the very act of translation, he necessarily quits or resigns his episcopal jurisdiction over the diocese he leaves. The counsel opposed to us, aware that this transla-

tion of bishops would be urged by us in favour of the right to resign, have been obliged, from the very authorities they have read themselves, to admit the right to this extent; but in order to deprive us of the just benefit of their admission, they strive to diminish its force, by insisting that it is in the case of translation alone, that a bishop may resign, and for this purpose, Bingham's *Church Antiquities*, book vi. ch. 4, sect. 6, was referred to. I do not mean to dispute the authority of this writer; it is deservedly great, and I shall, myself, afterwards rely on it for another purpose. Let us however see if it will support the doctrine for which it is now cited: for, if I do not greatly miscalculate, I shall, from his own authority, confute the argument of my learned adversary. After speaking of certain regulations, to prevent clergymen from removing from one diocese into another, without the consent of their bishop, the author proceeds to those which related to the translation of bishops from one see to another. "Nor," says he, "were the bishops so arbitrary in this matter, but that they themselves were under a like regulation, and liable to laws of the same nature. For, as no clerk could remove from his own church, without the licence of his bishop, so neither might any bishop pretend to translate or move himself to another see, without the consent and approbation of a provincial council. Some few there were who thought it absolutely unlawful for a bishop to forsake his first see, and betake himself to another; because they looked upon his consecration to be a sort of marriage to his church, from which he could not divorce himself, nor take another, without incurring the crime of spiritual adultery. To this purpose they wrested that passage of St. Paul, *a bishop must be the husband of one wife*, taking it in a mystical and figurative sense, as St. Jerome informs us. But this was but the private opinion of one or two authors, which never prevailed in the catholic church; whose prohibition of the translation of bishops was not founded on any such reasons; but was only intended as a cautionary provision to prevent the ambition of aspiring men; that they might not run from lesser bishopricks to greater, without the authority of a provincial synod, which was the proper judge

in such cases." And again: whenever such synod, "in their judgment and discretion, thought it necessary to translate a bishop from a lesser to a greater see, for the benefit and advantage of the church, there was no law to prohibit this, but there are a thousand instances of such promotions to be met with in ancient history, as Socrates has observed long ago, who has collected a great many instances to this purpose."

Thus it is evident, that the author is treating of the manner in which bishops may be translated from one see to another, and expressly says, there was no law to prohibit it, except what was made by the synod, not on the ground that it was *unlawful for a bishop to forsake his first see*, but merely as *a cautionary measure to prevent the ambition of aspiring men*. It is equally apparent that the regulations which were made on this subject, were entirely of human sanction, owing their authority to the provincial synod, and springing entirely from motives of human policy. Nor is there any thing here to be found which narrows the right of resignation to the mere case of a translation; quite the contrary; for though it was the private opinion of some few, that a bishop could not forsake his see, or in other words, resign his episcopal jurisdiction, yet, *that opinion never prevailed in the catholic church*.

If, however, it were even true, that the only instances to be found of episcopal resignations, were in cases of translations, they would not be less destructive of the argument on the other side, because it is founded on the absolute incapacity of a bishop to divest himself of his jurisdiction, and it would be enough to answer an argument resting on that ground, if we could show even a solitary case of valid resignation. A single example of the kind would break the charm, and put to flight the mystic tie which is supposed to bind a bishop forever to his diocese, which makes jurisdiction, once conferred, to end only with life; for it would prove, that in that case at least, he had the capacity to resign, and consequently, that his jurisdiction is in its nature resignable. But it is not true that the right of episcopal resignation is confined to the case of translation. I will drive

the gentlemen even from this refuge, under which they strive to maintain their shattered force, by showing, that this right is one which may be freely exercised, at the pleasure of every bishop, except so far as restraints may be imposed upon it by the competent ecclesiastical authority, and which very restraints show that episcopal jurisdiction is altogether a subject of human government.

One of my learned opponents was pleased to say, that he had not been able to find any authorities, directly in point, on the subject of resignation. If he meant that he could find none that would support the doctrine for which he contends, I can readily believe him; but if he found none that stood directly opposed to him, then he has exercised less industry and research, than he usually bestows on subjects that come under his diligent and scrutinizing mind, and much less than, in this cause especially, I can possibly suspect him of. The means of information were indeed so near him, that they could scarcely escape his notice; for in the very book, and but a few pages from the passages he quoted, and on which I have just remarked, there is an authority on this point, upon which, if I were even destitute of any others, I should repose myself in confidence and security. In book vi. ch. iv. sect. 2, of Bingham's *Church Antiquities*, after stating as a general rule, that neither bishops, presbyters, nor deacons, who upon entering into their respective orders, were presumed to have dedicated themselves to God, could afterwards desert or resign their office, and especially to follow a secular life, the writer proceeds thus:

“ But this rule, as it was intended for the benefit of the church, to keep the clergy to their duty, so when the benefit of the church, or any other reasonable cause required the contrary, might be dispensed with: and we find many such resignations or renunciations practised, and some allowed by general councils. For, not to mention the case of disability, by reason of old age, sickness, or other infirmity, in which it was usual for bishops to turn over their business to a coadjutor, of which I have given a full account in a former book, there were two other cases which come nearer to the matter

in hand. One was, when a bishop, through the obstinacy, hatred, or disgust of any people, found himself incapable of doing them any service, and that the burthen was an intolerable oppression to him: in that case, if he desired to renounce, his resignation was accepted. Thus, *Gregory Nazianzen* renounced the see of *Constantinople*, and betook himself to a private life, because the people grew factious, and murmured at him, as being a stranger. And this he did with the consent and approbation of the general council of *Constantinople*, as not only the historians, *Theodoret* and *Socrates*, but he himself testifies in many places of his writings. After the same manner, *Theodoret*, says *Meletius*, the famous bishop of *Antioch*, when he was bishop of *Sebastia in Armenia*, was so offended with the rebellious temper and contumacy of a perverse and froward people, that he abandoned them, and retired likewise to a private life. So *Theodorus Lector* tells us how *Martyrius* bishop of *Antioch*, being offended at the factiousness of his people and clergy, upon the intrusion of *Peter Fullo*, renounced his church with these words: *A contumacious clergy, a rebellious people, a profane church, I bid adieu to them all, reserving to myself the dignity of priesthood.* Another case was, when in charity a bishop resigned, or showed himself willing to resign, to cure some inveterate schism. Thus *Chrysostom* told his people, that if they had any suspicion of him, as if he were an usurper, he was ready to quit his government, when they pleased, if that was necessary to preserve the unity of the church. And so *Theodoret* tells us, that in the dispute between *Flavian* and *Evagrius*, the two bishops of *Antioch*, when *Theodosius* the emperor sent for *Flavian*, and ordered him to go and have his cause decided at *Rome*: he bravely answered, "Great sir, if any accuse my faith as erroneous, or my life as unqualifying me for a bishoprick, I will freely let my accusers be my judges, and stand to their sentence, whatever it be: but if the dispute be only about the throne and government of the church, I shall not stay for judgment, nor contend with any that has a mind to it, but freely recede, and abdicate the throne of my own accord. And you, sir, may

commit the see of *Antioch* to whom you please." The emperor looked upon this as a noble and generous answer, and was so affected with it, that instead of obliging him to go to *Rome*, he sent him home again, and bade him go feed the church committed to his care. Nor would he ever after hearken to the bishops of *Rome*, though they often solicited him to expel him. There is one instance more of this nature, which I cannot omit, because it is such an example of self-denial, and despising of private interest for the public good, and peace and unity of the church, as deserves to be transmitted to posterity, and to be spoken of with the highest commendations. It was the proposal which *Aurelius*, bishop of *Carthage* and *St. Austin*, with the rest of the *African* bishops, made to the donatists at the opening of the conference of *Carthage*; that to put an end to the schism, wherever there was a catholic and a donatist bishop in the same city, they should both of them resign and suffer a new one to be chosen. For why, say they, should we scruple to offer the sacrifice of such an humility to our Redeemer? Did he descend from heaven to assume our nature, and make us his members? And shall we make any doubt to descend from our chairs, to prevent his members being torn to pieces by a cruel schism? We, bishops, are ordained for the people of Christ. What, therefore, is most conducive to the peace of christian people, we ought to do in reference to our episcopacy. If we be profitable servants, why should we envy the eternal gain of our Lord, for our own temporal honours? Our episcopal dignity will be so much the more advantageous to us, if by laying it aside we gather together the flock of Christ, than if we disperse his flock by retaining it. And with what face can we hope for the honour which Christ has promised us in the world to come, if our honours in this world hinder the unity of his church? By this we see there were some cases in which it was lawful for men to renounce even the episcopal office, and betake themselves to a private life: the grand rule being in these and all other cases, to do what was most for the benefit and edification of the church, and sacrifice private interest to the advantage of the public."

Here then the right of a bishop to resign his episcopal jurisdiction, is distinctly laid down, subject to no other rule for its exercise, than *to do what was most for the benefit and edification of the church*. And we find too, that this principle has been practised upon from the first establishment of our church, and that *many such resignations* had accordingly taken place, and were *allowed by general councils*. It follows, therefore, that until this right is prohibited or restrained by any canons which the general or state conventions may think fit to enact for that purpose, it may in this country be freely exercised. In Bishop Burnet's History of the Reformation, vol. i. p. 205 & 308, two instances are mentioned, of resignations by bishops in the time of Henry VIII. and in the second volume of the same work, page 242, William Reps, bishop of Norwich, was prevailed upon, in the reign of Edward VI. to resign his bishoprick, to make way for Thirlby, who was thereupon promoted to that see, "vacant (as the patent expresses it) by the free resignation of William, the former bishop." The authority of these authors is confirmed, if indeed they stand in need of confirmation, by the standard writers upon English law. According to lord Coke, judge Blackstone, and professor Woodeson, resignation by a bishop, of his see or jurisdiction, is pronounced to be valid, and is actually enumerated, by the two last writers, as one of the means by which a bishoprick may become vacant. *Co. Litt.* 329 a. 1 *Bl. Com.* 382. 1 *Wood*.

The effect of this resignation too, is precisely what we ascribe it; the temporal power or jurisdiction being derived from man, returns to the power that gave it, whilst the spiritual character, derived from our Saviour, through the Apostles and their successors, remains, because, that not being the gift of man, can not be surrendered to man. Bingham, in the 3d section of the same book, and chapter last quoted, is express on this subject. "In these cases, (says he) a bishop, after he had renounced, was not to intermeddle with the affairs of the church, to ordain or perform any offices of the like nature, unless he was called to assist by some other bishop, or was commissioned by him as his delegate: *yet he was allowed the title, and honour, and communion of a bishop*,

as the general council of Ephesus determined it should be in the case of *Eustathius* bishop of Pergas, metropolitan of Pamphylia, *who had renounced his bishoprick, being an aged man, and thinking himself unable to discharge the duties of it.*"

I have thus then shown, that episcopal jurisdiction is in its nature capable of being resigned, and that this does not interfere with the spiritual character, which still continues when the former ceases, and that they ought not, therefore, to be confounded: that the resignation of episcopal jurisdiction is not forbidden by scripture, nor by the canons of the church; and that such resignation is conformable to the practice and usages of the church, from its earliest ages, down to the present day, and to the law of England, in which the episcopal is the established church of the country.

What is there then which stands opposed to this massy weight of authority, not the growth of yesterday, but acquiring its strength through the progress of ages? I know of nothing but the opinion of the house of bishops expressed at Trenton, in the year 1801. I shall treat this opinion with all the deference which is due to the venerable body that pronounced it, for whom no one can entertain a higher respect as a man, or greater veneration as a christian, than I do. My duty, however, imposes upon me the necessity of showing that it has not the efficacy of law, and that being founded in error, it is stripped of all the weight to which it would be otherwise entitled.* That this act of the house of bishops, which cannot even be deemed a collegiate act, has not the force of a law, is manifest from the organization of the general convention itself. The house of bishops form but one part of that convention; the house of clerical and lay deputies the other; neither can pass a law without the concurrence of the other: in the language of the constitution itself, "all acts of the convention shall be authenticated by both houses."† Now, it is not pretended that the clerical and lay deputies ever approved or disapproved of this

* See the opinion, p. 40.

† See the 3d art. of the Constitution, p. 32.

opinion; or that they were ever required so to do. And yet, in a case where there was no deliberation on their part, and where indeed nothing was submitted to them to deliberate upon, for it never was sent to them for their concurrence, they must be considered, by a sort of dumb legislation, as having concurred in the opinion of the house of bishops, and thus given to it the force of a law. But the truth is, it was not ever intended by the house of bishops themselves, as amounting to a law, or having any obligatory effect, as is apparent, not only from the form and nature of the thing itself, but from bishop White's letter to Mr. Jones, written in answer to one from him, but which, as it did not suit his purpose, he thought he had the right to suppress; but bishop White thought otherwise, and furnished bishop Hobart with a copy of it, which may be seen in his pamphlet, entitled, *A Statement, &c.* at page 17. "On this subject," says he, "the house passed *an opinion*, in the instrument to which you refer. Now, although I was a party to that instrument, and still think it was founded on correct principles; yet I cannot affirm, that the act of the bishops, with the circumstance of their being no opposition on the part of the other house, rendered the measure *a law of the church*. Still it stands on its own merits. If it be erroneous, it must be because bishop Provoost's precedent resignation was regular, which puts an end to the discussion." This is evidence to which Mr. Jones cannot object, because, in the pamphlet, he is pleased to style *Dr. Hobart's System of Intolerance*, page 38, he refers to bishop White, as president of the house of bishops when the above opinion was expressed, and as one who "was consequently fully acquainted with the meaning and intent of that act." It is a gross mistake, therefore, to consider this opinion as amounting to a law, or as being the declared "sense of the church," or, "an adjudged case by the highest tribunal," as Mr. Jones, in a moment of false and fancied triumph, chooses to call it.* It is but a mere matter of opinion, and so at the time, and since understood by those who gave it. If then it is founded in error, what becomes

* Page 37 of his "*System of Intolerance*." &c.

of it? Are we to acknowledge that it is wrong, and yet be governed by it, as if it were right, on account of our respect for its authors? They very properly disclaim any such courtesy towards them; they leave it to stand *on its own merits*, not on theirs. I have endeavoured to show, in the preceding part of this argument, that the ground upon which the bishops have put their opinion, is untenable. It depends entirely, says bishop White, on the question, whether "bishop Provoost's precedent resignation was regular." So far as relates to the right to resign, I have, I trust, thus already shown, in opposition to this opinion, that it "is consistent with ecclesiastical order," with "the practice of episcopal churches," in all ages, and "with the tenor of the office of consecration." If I have succeeded in this, then I have shown that the proceeding, thus far, was regular. That the resignation was in other respects also regular, I shall hereafter establish with equal certainty; and if I do, in the emphatic language of bishop White, it "puts an end to the discussion."

I mean now to show that bishop Provoost having the right to resign, could resign to the convention of this state only. On this point we are told, that if bishop Provoost could resign, his resignation could be made to the house of bishops only, and not to the convention of this state, and that as it was not accepted by the former, it was of course invalid. On this subject, the fundamental rule is, that every resignation must be to the superior; and Burn's Ecclesiastical Law, volume 3, page 321, lays down that principle and no other. Who then is the superior? It must be the person or body from whom the authority to be resigned is derived, or who represents that person or authority. The power which bishop Provoost meant to resign, was his episcopal jurisdiction; and there is no necessity of referring, as one of the gentlemen on the other side did, to Bingham's Antiquities, to ascertain this.* The object of the reference was, to show that *jurisdiction* and *order* were the same, and hence, that as bishop Provoost's resignation would include his order or spiritual character, that it was void. But the

* See Bingham's *Antiq*, b. ii. ch. 1, sec. 1.

authority referred to, will not warrant this reasoning, for it will be found to be nothing more than a discussion of the question, whether the order or jurisdiction of a bishop is not entirely distinct from a mere presbyter: on which point there has been much learned argument, but not, as I apprehend, applicable to the case before us. From whom, then, did bishop Provoost derive the power which he meant to resign? I answer, from the convention of this state, who, and who alone possess the power of electing bishops over this diocese, who prescribe their duties, and confer on them their jurisdiction.* What is the extent of the power and authority of the house of bishops in this respect? It is merely by consecration, to confer, in virtue of divine appointment, the spiritual power, which alone is referred to in all the passages that were read from Nelson's Festivals and Fasts; but in all that relates to jurisdiction, they have no agency; that is given and regulated by the convention. If then the house of bishops do not clothe the bishop elect with his jurisdiction, how can they, in regard to that, be considered his superior? The consecration is in consequence of the election: it is in conformity to it, and is the mere evidence of its consummation: no sooner, however, is that office performed, than the power of the acting bishops, for, as I shall afterwards show, it need not be by the house of bishops, is exhausted. And upon the production of the requisite testimonials, they are bound to consecrate, unless indeed they should have conscientious objections to the candidate presented them. But even in such a case, they could barely refuse; it would give them no rights in the nomination or election of any other person. As the house of bishops can, therefore, take no part in electing bishops; as their temporal authority or jurisdiction is exclusively the grant of the conventions by whom they are elected, the convention of this state must be the superior, to whom alone bishop Provoost could have resigned. The convention is here, what the metropolitan is in England; and to allow the house of bishops to possess

* *Art. 4, Con. Ep. Ch. p. 32. Art. 7, Con. Ep. Ch. of this state.*

that character or power, as seems to be contended for, by our adversaries, would be as repugnant to the nature and genius of our civil institutions, as it would be subversive of our plan of church government.

In order, however, to show that a bishop in England does not resign to the body by whom he is elected, our convention is compared to their dean and chapter; and the power of our convention, it is said, is merely to recommend to the house of bishops, who must be the superior, because they consecrate the candidate, or confirm his election by consecration, and that he should, therefore, resign to them. Before I proceed to the principal answer to this argument, I will state some preliminary objections to it.

In the first place, the house of bishops did not pretend that the resignation of bishop Provoost was irregular, because it was made to the convention, when it ought to be made to them. They put their opinion upon the broad ground, that there could be no resignation of episcopal jurisdiction. They advanced no metropolitan pretensions, and I venture to say, that that venerable body never entertained any thoughts of the kind, and would be the very first to disclaim them. This important branch of power, or more properly speaking prerogative, was not claimed by the house of bishops; its discovery was reserved for the learning and research which has brought it to light on this occasion, and which seeks to enlighten that house in its duty and rights. It is really a matter of regret that so much useful labour should be lost, as I fear it will, for I cannot prevail on myself to believe that those for whose use it is so kindly intended will ever avail themselves of its benefit. Again, it is not correct to say that the house of bishops, as such, do perform the office of consecration, or confirm the election of the candidate thereby. It is true that consecrations usually take place during the sitting of the general convention, when the house of bishops is of course convened; but they do not act, at least not necessarily so, as a house, for three bishops are enough at any time to consecrate another, and accordingly, during the recess of the convention they have this power, which in the case of bishop Hobart was actually exercised. A bishop

from any episcopal church on earth might, if requested, be present and assist in the consecration, and it would be perfectly canonical.

Chief justice KENT. Do I understand that the state convention elect, and that then three bishops may consecrate.

EMMET. We contend that the convention elect, that the house of bishops, and of clerical and lay deputies pass upon that election by signing recommendations, after which any three bishops may consecrate.

WELLS. The gentleman is entirely wrong, and I am obliged to repeat, that a consecration may take place without the approbation or even the knowledge of either the house of bishops, or the house of clerical and lay deputies: so that it is not indispensably necessary that either house should *pass upon the election or sign a recommendation.* To shew that I do not speak without authority, I beg leave to refer the court on this point, to the fifth canon of the general convention, which is as follows:

CANON V.

Of the consecration of bishops in the recess of the general convention.

If, during the recess of the general convention, the church in any state or diocese should be desirous of the consecration of a bishop, the standing committee of the church in such state or diocese may, by their president, or by some person or persons specially appointed, communicate the desire to the standing committees of the churches in the different states together with copies of the necessary testimonials; and if the major number of the standing committees, shall consent to the proposed consecration, the standing committee of the state or diocese concerned, may communicate the evidences of such consent, together with the other testimonials, to any three bishops of this Church, who may thereon proceed to the consecration. The evidences of the consent of the different standing committees shall be in the form prescri-

hed for the house of clerical and lay deputies, in the general convention; and, without the aforesaid requisites, no consecration shall take place during the recess of the general convention.

Now it is manifest from this canon, that a bishop may be consecrated as well during the recess as during the sitting of the general convention, if the course prescribed by it is pursued; and consequently, that whenever a consecration does take place during the recess; neither the house of bishops, nor that of the clerical and lay deputies, are at all consulted on it. The standing committees of the churches in the different states are in such case expressly substituted for the house of clerical and lay deputies, and any three bishops of the churches for the house of bishops. So that this confirmation of the election of a bishop by his consecration, and which is to draw after it the right of resignation to those who thus consecrate, does not belong exclusively to the house of bishops; inasmuch as it may often, and has been once already, exercised by three bishops of the church. The consequence of this, is, that the resignation of a bishop, must only be to the house of bishops where they were the consecrating body, and to the other three bishops, when the act was performed by them. By their own argument, therefore, my learned friends would leave the house of bishops shorn of half the honours which they have so gratuitously heaped upon them. Let us trace this a little farther: if the consecration is to operate as a confirmation of the election of a bishop, so far as to attach to it the right of receiving his resignation, what becomes of the reasoning by which it is attempted to prove that the house of bishops were the superior to whom bishop Provoost ought to have resigned; for certain it is, that he was not consecrated by them, and consequently they did not confirm his election, and of course were not entitled to receive his resignation. It is well known that bishop Provoost was one of the first bishops in the United States, and that he was consecrated in England by the archbishop of Canterbury. Now if the argument urged on the other side is correct, it clearly establishes that bishop Provoost, instead of resigning either to the state con-

vention, or to the house of bishops, ought to have resigned his jurisdiction over the diocese of New-York to the archbishop of Canterbury! To this extravagant length does this doctrine lead: it is impossible to adopt it, and stop short of this palpable incongruity. I now return to the analogy which is supposed to exist between the dean and chapter in England, and our state convention. The dean and chapter, it is said, is the body who, upon a vacancy in the see, to which they belong, elect a bishop to fill it; but still if he resign, it is not to them, but to the archbishop or metropolitan; and therefore, say my learned friends, as the house of bishops is the metropolitan with us, our bishops, though elected by the state conventions, must not resign to them, but to the house of bishops. This is stating their argument fairly, and however specious it may seem at first glance, I shall not only refute it, but satisfy my own reasoning by the very case on which they rely. First then I ask, do the dean and chapter in England, like our convention, elect the bishop who is to preside over them? certainly they do not, they are not the elective body, except as a matter of mere idle form: It would indeed be an abuse of the term to apply it to them. The principle in the church of England is, that the king is the head of the church, as he is of the state, and it is the king who in truth elects; it is the king who is the superior, and to whom thro' his representative, as I shall presently shew, that a bishop resigns. The dean and chapter elect a bishop in virtue of a writ of *Conge d'elire* issued to them by the king, commanding them to proceed to the election, and naming in the writ the very name of the person whom they are to elect. 1 Blk. Com. 377 to 383. 1 Woodes. 294. They can elect and return no other; and if they neglect for twelve days to make this election, for I am obliged to use the word for the want of an appropriate one, the king proceeds to make the appointment directly, which he would otherwise have made indirectly. Thus the sole power of electing belongs to the king. The dean and chapter are but the mere passive echoes of the royal choice. What just comparison is there therefore between our convention and the dean and chapter? Does our convention graciously elect its bishops in consequence of a writ of *Conge*

Delire, from the house of bishops? Does it not, on the contrary, exercise the same free, independent and sovereign power upon this subject, that the king does in England? It may with much more propriety, therefore be compared in this respect, to the king; for the king like the convention elects, whilst the bishops there, as here consecrate; and yet the resignation there, is not to the power that consecrates, but to the one that elects. I shall however be told that in England the bishop resigns to his archbishop. Agreed, but does he resign to the archbishop who happened to consecrate him? No, but to the one who is his immediate metropolitan: and why? *because he represents the king*; he is the intermediate link of communication between the bishop and the king, who is the head of the church; in whose place he stands to receive whatever communications are made to him. The resignation is therefore virtually to the king, because he, like our convention, is the superior: and not the dean and chapter; and such is the well settled law in England. 1 Wood. 294, 295. Accordingly whenever a resignation is made to the archbishop, how does he dispose of it? Does he proceed to fill the vacancy, or in short to do any thing else than transmit the resignation to the king? It is he, and he alone, who then proceeds to act by filling up the vacancy. To shew still farther that resignation is always made to the electing and not to the consecrating authority, I would ask, to whom does the archbishop resign? Is it to the archbishop who consecrated him? No, but to the king himself by whom he was appointed. It must be apparent then that in England the dean and chapter are not the elective body, and that therefore the resignation is not to them, but that the king is the elective body, and that the resignation is accordingly in reality made to him. I have consequently a right to conclude that as our convention possesses, like the king, the sole right to elect a bishop, so like him it has the sole right to receive and act upon his resignation.

Having, as I hope, thus shown that bishop Provoost might resign his jurisdiction, and that the convention of this state was the only body to whom he could resign, I proceed to enquire, whether he did in fact make such resignation, and if

so whether it was accepted, and who was chosen his successor.

That bishop Provoost meant to resign his episcopal jurisdiction to the state convention, is not, I believe, disputed. That he did in fact resign to them, is equally clear, if he had the power to do so. "The right rev. bishop Provoost addressed the convention, *and resigned his episcopal jurisdiction of the diocese.*"* Nothing can render this part of the subject plainer, than the language of bishop Provoost himself, as recorded in the Journals of the convention. He never did resign to the house of bishops, nor did he ever think of doing so, or of asking their permission to resign, notwithstanding Mr. Jones, in his *System of Intolerance*, (p. 35) has the hardihood to assert, that "bishop Provoost sent a letter to the president of the house of bishops, to be laid before that house, *requesting permission to resign his episcopal jurisdiction over the church in the state of New-York.*" The letter contains nothing of the kind: it is merely a friendly and respectful communication to his right rev. brethren, of what *he had done*, not of what he intended *to do*, much less did it ask for their authority or permission to allow him to resign. Yet Mr. Jones, when he made this bold, not to call it wilful misrepresentation, had the letter to which he refers lying before him: nay, not only putting correctness at defiance, but even forgetting all sense of shame, he actually transcribes this very letter, into the same page of the pamphlet where he mistates its contents: thus affording to every one who reads it, the direct means of detecting the imposition attempted to be practised upon them. Let the letter, however, speak for itself.

New-York, Sept. 7, 1801.

Right rev. and dear sir,

I think it my duty to request, that, as president of the house of bishops, you will inform that venerable body, that, induced by ill health, and some melancholy occurrences in my family, and an ardent wish to retire from all public em-

* See *Journals of the Convention*, p. 37.

ployment, I resigned, at the late meeting of our church convention, my jurisdiction as bishop of the protestant episcopal church in the state of New-York.

I am, with great regard,

Dear and right rev. sir,

Your affectionate brother,

SAMUEL PROVOOST.

Right. rev. bishop White.

In what part of this letter is to be found the request for permission to resign? A request for permission to do, what was already done. I have, says bishop Provoost, "*resigned at the late meeting of our church convention,*" &c. And yet this letter is tortured into a formal application to the house of bishops, to give bishop Provoost permission to do an act which he plainly tells them he had already performed; which he does not even ask them to approve of or confirm, and which he evidently considers valid without any interference whatever on their part. But I will not longer dwell on this manifest perversion. I return to the undeniable fact, standing on record in the journals of the convention, that bishop Provoost did, as far as could depend upon his act, resign his episcopal jurisdiction to the convention.

The right of bishop Provoost to resign, and that of the convention to accept, have been already discussed. If the convention did accept, the resignation was complete. If there was a fact in this whole controversy, which I could have supposed would have been free from doubt or dispute, I should have thought it would have been this, that the convention did accept bishop Provoost's resignation. In this however, I find myself deceived, for it has been seriously argued that the convention instead of meaning to receive bishop Provoost's resignation, really meant to disapprove of and censure the measure. The convention, it is true, did not by formal resolution declare, in terms, that they accepted the resignation which was made. Nor do I know that this was necessary, or that any precise form of words were required to signify their assent. If what was done amounted to an assent on the part of the convention, as much as if

it had been clearly and unequivocally expressed, the mere form in which it was done, must surely be immaterial. Acts, are often as strong indications of intention, as words; and if the proceedings of the convention which took place in consequence of bishop Provoost's resignation do not show that it was accepted by them and acted on accordingly, they are altogether irreconcilable with common sense. Let us for an instant turn to them. It will be seen that as soon as bishop Provoost had announced his resignation, that a committee was appointed "to consider and report what measures are necessary to be pursued in the present situation of this church." The committee accordingly reported that, "The right rev. Samuel Provoost, D. D. having declared that he resigned his jurisdiction as bishop of the Protestant episcopal church in this state, and having expressed his affectionate wishes for the prosperity of the church in general, and the individual members of the convention,

"Resolved that the convention return their thanks to the bishop for his kind wishes, and whilst they regret that he should have judged himself under the necessity of quitting so suddenly the exercise of the episcopal office, and those solemn and important duties which are connected with it, they beg leave to assure him of their sincere and fervent prayers that Divine Providence may so guide and govern him in all his ways, as will most conduce both to his temporal and eternal felicity.

"Resolved, that a copy of this resolution be transmitted to bishop Provoost by the secretary of the convention."

This preamble, and the resolutions "were unanimously adopted by the convention," and for my own part, I see no way of escaping from the conclusion which the bare perusal of them makes, as strongly as any additional argument can do. The convention here expressly recognize bishop Provoost's resignation, express their regret that he found himself "under the necessity of quitting so suddenly the exercise of the episcopal office," and assure him of their fervent prayers for his temporal and eternal felicity. Bishop Provoost "addressed the convention" when he resigned, and had "expressed his affectionate wishes for the prosperity of the church

in general, and the individual members of the convention." And in return for this farewell address on their solemn parting, the convention express their sorrow on the occasion, and "their sincere and fervent prayers" for his future happiness. The scene here closed between them, the affecting separation was past, and it would forever have remained undisturbed, had not the unhallowed feet of an impertinent intruder trod upon its ashes and vexed its repose.

The convention having performed their duty towards bishop Provoost, show their further sense of what had taken place by resolving, at the same meeting,* that they would proceed to the election of a bishop, and that they could not "with propriety act upon the memorial from the corporation of Christ Church, while this church is *destitute of a bishop*." How this could be the case, or why the convention should have determined to proceed immediately to the choice of a bishop, if bishop Provoost had not resigned, and the convention had not accepted his resignation, I confess myself utterly at a loss to comprehend. But it is still urged, on the other side, that if the church was destitute of a bishop, they could not legally proceed to the choice of another, any more than they could act upon the memorial from Christ Church, and consequently, I suppose, that bishop Moore's election was a nullity.

COLDEN. That is not our argument. We say that a bishop may *decline* acting, but cannot *resign*. A proposition in the convention to elect a suitable person to be consecrated as Bishop, and to have the charge of the church in this state, was negatived. A motion to elect a suitable person as bishop was then made and carried, but nothing is said about his having the charge of the church. Hence the charge of the church must be supposed to be still in bishop Provoost, though he had declined to act. Besides, if the church's being destitute of a bishop disqualified the convention from acting in one case, it must equally have done so in others.

* See page 33.

WELLS. I think I neither misunderstood nor mistated the argument of my learned friend; but I shall endeavour to answer it in the manner he has now presented it. I certainly will not stop to criticise upon the difference between *declining* to act in an office, *quitting* the exercise of it, or *resigning* it. If, in these expressions, in the sense they are here used, there be aught of variance; if when weighed in the nicest scales of criticism, the one is found to differ from the other; nay, if the very dust of the balance can alter the weight, the gentleman shall have the benefit of the difference: he may use it as he will. For my own part I shall consider them of equal import. The difference, however, of phraseology in the two resolutions alluded to respecting the election of a bishop, may deserve a moment's notice.* The first resolution was negatived, and therefore, says the gentleman, the bishop elect was not to have the charge of the church. If this important meaning was intended to have been conveyed by the convention, it seems to me it would have been more distinctly expressed, and that they would not have left us to grope for it in idle conjecture or fanciful distinctions; and they would probably have explained other parts of their proceedings which are utterly irreconcilable with this idea. I admit, however, that the first resolution was negatived, but not for the reason assigned by my friend, but simply because in that it was proposed to call a special convention, in the month of November, to choose a bishop; whereas by the second one, which was adopted, they determined to proceed to that choice the next day. As to the difference between "bishop of the protestant episcopal church in this state," used in the last resolution, and "bishop to have the charge of the protestant episcopal church in the state of New-York," used in the first, it is another of those criticisms which I freely surrender the benefit of to any one that will take it. The convention, like myself, not being such deep philologists as my learned friend, I imagine, thought they amounted to the same thing, and used them accordingly.

* See the resolutions, page 38.

There is a marked difference too between the proceedings of the convention at which bishop Moore was elected, and those of the convention of 1811, at which bishop Hobart was elected, which clearly shows the different stations they were intended to fill. In the latter case the convention acts distinctly on the ground of choosing an assistant bishop. "Resolved, that the convention will now proceed to the choice of a bishop, to assist bishop Moore in the duties of his episcopal office, and to succeed him in case of survivorship," page 12 Jour. Sp. Con. of 1811. Whilst bishop Hobart was thus distinctly elected *to assist* bishop Moore, he himself was chosen to supply the vacancy occasioned by the resignation of bishop Provoost: whereas, if he had not resigned, or the convention had not accepted his resignation, bishop Moore would have been chosen to assist him, as bishop Hobart was to assist bishop Moore.

But among the marvellous discoveries which spring up in this cause with the rapidity of more than mushroom growth, is the one I was about to notice when I was last interrupted. It is this: that if the circumstance of the church's being destitute of a bishop, disqualified the convention from acting in one case, the effect must be the same in every other. Is it then true that the convention can in no case act, when the church is destitute of a bishop? If it is, I would ask by what authority was bishop Provoost himself elected? Or what would have been the situation of the church, if, instead of resigning he had died. The church, in the first instance, certainly was without a bishop, as it would also have been again in the latter; and according to the argument of my friend, the convention could never have elected a bishop. But the church is not so imprudent; for although the bishop, where there is one, "shall preside in the convention; yet in case of a vacancy, or necessary absence, the members shall elect a president from among the clergy."* The ordinary business of the convention, could therefore go on, even when there was no bishop, and in such a case they would, from necessity, have the right to elect one. The memorial referred

* See 5th art. of Con. of Epis. church of this state.

to, was one that probably required the co-operation, or aid of the bishop, and could not, therefore, with propriety, be acted upon until that vacancy was filled; but to draw from thence the general conclusion that it would be equally improper to transact any other business, would be to dissolve the convention itself.

We shall probably be told, however, that if the convention even elected bishop Moore as diocesan, still as the house of bishops refused to consecrate him as such, but only as coadjutor, he is entitled to no other character. I have already shewn that all that the house of bishops did, or could do indeed on this subject was, to express the opinion of its individual members. They had no right to enquire into, or to decide upon, the extent of the power of the person that was presented to them for consecration: all they were required to do, was to aid in conferring the spiritual character by consecration, which is done in the same manner in the case of a diocesan, as of a coadjutor. The house of bishops could not therefore impose any condition or restriction, in the act of consecration, which would in the slightest degree interfere with the power of the state convention to confer and regulate the jurisdiction of bishops elected by them, to whom alone, as I have before shown, this right belongs. To allow this power to the house of bishops, you must equally allow it to any three bishops of the church, who in the recess of the general convention may be called upon to perform the office of consecration; and it would, moreover, be imparting to them an important share in the elective rights of the convention which by the constitution of our church are exclusively given to them.* The house of bishops, however, did not on this occasion pretend to impose any such conditions or restrictions; they contented themselves by a bare expression of their opinion in the manner already explained; but in the certificate of consecration they carefully abstain from touching on the question, and seem studiously to refer to bishop Moore's election as deciding his character. They consecrate him into the office to which he was elected, cautiously and wisely leaving it with the convention to decide who was their diocesan if there should ever be a question about it.

* See art. 4. *Con. Epis. ch. p. 32.*

They certify that they did "rightly and canonically consecrate our beloved in Christ, Benjamin Moore, D. D. rector of Trinity Church, in the city of New-York, of whose sufficiency in good learning, soundness in the faith, and purity of manners we are fully ascertained, into the office of bishop of the Protestant episcopal church in the state of New-York; to which the said Benjamin Moore, D. D. hath been elected by the convention of the said state, in consequence of the inability of the right rev. bishop Provoost, and of his declining all episcopal jurisdiction within the said state."* Now what are the qualifications into which the consecrating bishops consider themselves bound to enquire and to decide on? Evidently the *sufficiency of learning, soundness in the faith, and purity of manners* of the candidate presented to them; these, the sanctity of their own characters, and the obligations of conscience required them to examine into, until they "had fully ascertained that the candidate possessed them." But here their enquiries ended, because their only object was the qualification of the candidate for the spiritual character he was about to assume. Again, into what office did they consecrate bishop Moore: into the office to which he had *been elected by the convention of this state*. What was that? If I have not before shown that it was that of diocesan, it would be vain in me to make any farther attempt for that purpose. Why was he so elected? because bishop Provoost, *had declined all episcopal jurisdiction* within this state: in other words, he had resigned to the convention, who had thereupon chosen bishop Moore in his place. The result of this is, that bishop Moore was actually consecrated in strict conformity to the character conferred on him by his election.

Look at the difference between these letters of consecration, and those of bishop Hobart. In the latter, the consecrating bishops, after stating that they have "fully ascertained," that he possessed the qualifications already mentioned, declare that they have consecrated him "into the office of bishop of the protestant episcopal church in the state of New-York, to which he hath been elected by the

* See the Certificate, page 42.

convention of the said state, to assist the bishops of the church in said state, in the duties of the episcopal office, and to succeed in case of survivorship.”*

Judge THOMPSON. By bishop Hobart's certificate of consecration, as printed, it appears that he was consecrated to assist the *bishops* in the state of New-York. Is this correctly printed?

EMMET. It is. The consecration is to assist the *bishops*; and bishop Provoost joins in the same letters of consecration, and in them is called *bishop of the protestant episcopal church in the state of New-York*.

WELLS. I intended to notice the circumstance mentioned by his honour, *judge Thompson*, as well as that to which my learned friend has just directed the attention of the court. He may trust me that I shall not shrink from any part of this controversy. Shielded as the cause is, which I support, with the panoply of truth, of justice, and religion herself, I feel that is invulnerable: that it is so thoroughly armed at all points, that even its very heel is guarded against the steels of its adversaries.

I was proceeding to point out the difference between the letters of consecration of bishop Moore and bishop Hobart, and to show that their characters are as distinctly marked in these letters, as they were by the convention in their respective elections. In the case of bishop Moore, he was elected diocesan, and he was consecrated into the office to which he had been elected. In that of bishop Hobart, he was elected an assistant bishop, and as such he was consecrated. It is true, the word bishop is used, but yet the office to which he was elected by the convention, is expressly mentioned as the one into which they had consecrated him: this must, therefore, be the controlling description, and whatever is inconsistent with it, would, according to the well settled rules of legal construction, be rejected as sur-

plusage. But there is no necessity of resorting to this technical rule of interpretation, for the insertion of the word bishops was probably at the instance of bishop White and bishop Jarvis, who had concurred in the opinion expressed at Trenton, and which has already been considered. They, perhaps, thought that self-consistency required the use of the word bishops, rather than bishop, especially as it could not affect, in any degree, the validity of the instrument itself, in which they pointedly declare, that they have consecrated bishop Hobart *into the same office to which the convention had elected him*, and when it is most manifest that they elected him *to assist bishop Moore*.

I will now consider the effect of bishop Provoost's being a party to the letters of consecration of bishop Hobart, and of the title by which he is described in them. So far as respects bishop Provoost himself, no just argument could be drawn from these circumstances, in favour of the diocesan pretensions which were afterwards set up by him; for he had not then himself discovered, that, notwithstanding his resignation, he was still diocesan. He made this discovery by the perusal of Mr. Ireland's pamphlet, which was not then published.* I could wish that he had got his information from a purer source! He did not, therefore, on that occasion, pretend to act in the character of diocesan, but merely in his *spiritual* character of bishop, which has been admitted to be indelible, to aid in performing an office wholly *spiritual*. This he could do consistently with that character, according to my argument on that part of the cause. The passage I before read from Bingham, is peculiarly applicable to this view of the subject. A bishop who had renounced or resigned, could not afterwards "intermeddle with the affairs of the church, *to ordain or perform any offices of the like nature, unless he was called to assist by some other bishops;*" "*yet he was allowed the title, and honour, and communion of a bishop.*"

Thus it appears, that though after resignation by a bishop, all powers which relate to jurisdiction are at an end, yet that

* See Mr. Moore's testimony, p. 158.

in certain spiritual offices he may still take a part, when properly *called to assist*: and that his *honour*, his *title*, and his *communion as a bishop*, are at all times allowed to him.

Now, at whose instance, or in what manner did it happen, that bishop Provoost did assist in the consecration of bishop Hobart? Was it a spontaneous exercise of power or duty? No. He consented to attend and take a part in the consecration, *at the express request of bishop White*, on a personal application made to him for that purpose. In proof of this, I refer to bishop Hobart's Statement, page 9, in a note. This then sufficiently accounts both for bishop Provoost's acting in the consecration, and also for the title which on that occasion, and probably on some others, was annexed to his name in the certificate. And I doubt whether these circumstances will ever again be marshalled among the proofs of bishop Provoost's being the diocesan.

The last of the pretensions that have been set up by the zeal of imprudent friends for this gentleman's still retaining his diocesan rank, for, as I wish to speak of him with becoming respect, I cannot but think that many of those which have been urged, would be disclaimed by himself, is the one which I shall now notice. It is the conversation that is said to have taken place at Trenton, respecting the consecration of bishop Moore. Mr. Ireland is the witness upon this occasion.* He relates, quite in detail, what, he says, passed at an interview between the house of bishops and the New-York delegation, relative to bishop Provoost's resignation, and the consecration of Dr. Moore; and which, he says, was communicated to him on his arrival at Trenton. The only use, it appears to me, to which this testimony can be applied, will be to prove, that Dr. Moore knew the opinion of the house of bishops, to which I have so often been obliged to refer, before his consecration, and that he, therefore, entered upon his office with notice of bishop Provoost's diocesan rights, or rather of what the house of bishops thought of them. If this opinion, however, could in no wise affect Dr. Moore's future rights, and was, besides,

* See Mr. Ireland's testimony, p. 125.

in itself incorrect, both of which, I trust, I have shown to be the case, then I do not very well perceive how the communication of it to Dr. Moore was to give to it either authority or weight. If the story, therefore, told by Mr. Ireland were ever so true, it seems to me to be wholly immaterial. I cannot refrain, however, from remarking, that it rests entirely upon the testimony of this gentleman, whom I certainly do not wish to treat with unnecessary harshness, because, it is not in my nature to triumph over the fallen, even where they have been the authors of their own ruin. But, considering the figure this gentleman has been pleased to make as a witness, and the still more prominent station he has occupied, as a writer of one of the pamphlets which owe their birth to this controversy, I feel myself compelled to remind the court, that he appears before them in the character of a degraded clergyman; one certainly not calculated to excite any prepossessions in his favour. Nor would these be increased by an inspection of the pamphlet of which he is the author; for it is not less disgraceful to him as a christian, than it is dishonourable to him as a gentleman. Whether these are the claims which fastened themselves upon the fervid fancy of the counsel who opened this cause, when he burst forth into the eulogium which he pronounced upon the character of this favourite witness, when he ushered him into the presence of the court, I know not: I sincerely hope there were others with which I am not acquainted.

The rev. Mr. Wilkins, with whose name is at once presented to the mind a model of all that learning, piety, and purity which should ever distinguish his order, was present at the same interview with the house of bishops, of which Mr. Ireland speaks, and he has no other recollection of what passed, than bishop White's expressing some "doubt or difficulty about a bishop's resigning."* It is possible, therefore, that in regard to this whole business, Mr. Ireland's imagination may have insensibly usurped the place of his recollection. Among other things, he declares, *he never had a doubt from that time, but that bishop Provoost continued to be the dio-*

* See Mr. Wilkins's testimony, p. 241.

cesan. Now, it is a little remarkable, that this very gentleman was *presented* to bishop Moore *as the diocesan*; was tried by a tribunal appointed by him, and the sentence of degradation was pronounced by him; and yet in the whole course of those proceedings, not the lip of an objection escapes from this gentleman's lips to bishop Moore's diocesan authority. He acquiesced in its exercise, in silent submission, at the very moment when it sealed his own disgrace; but so much stronger is his sense of injustice towards his friend Mr. Jones, than what he felt for his own wrongs, that for him he unlocks his bosom, which had hitherto concealed the secret, and generously furnishes him with the means of defying the discipline of his church, that he had not deigned to use himself, by informing him that bishop Moore was not the diocesan, and therefore had no jurisdiction in his case.

Dismissing any farther notice of the conversations which are supposed to have taken place at Trenton, as entirely unimportant, for they could not alter the real nature of bishop Moore's character or authority, I proceed to the last consideration which I intend to lay before the court on the subject of diocesan. As it was the convention of this state by whom bishop Provoost and bishop Moore were elected, and who were to determine when the power conferred by them had ceased, whether by resignation or any other cause; to them must also necessarily belong the right to decide on the rank of those who derive their power from them. The question of diocesan has accordingly been put at rest, by the solemn decision of the convention upon it. At their meeting in October, 1812, bishop Provoost addressed a letter to them, in the character of diocesan, in which he informs them, that he is ready to act in conformity to the opinion expressed by the house of bishops, and to "concur in any regulation which expediency may dictate to the church." The convention, upon this, entered into a full discussion of the subject, thus brought before them, and passed certain resolutions, which I beg leave to refer to at length,* as I

* See *Journals of Con. of Prot. Epis. Church of this state*, p. 50.

mean only to read the concluding part of them, which is in these words: "And this convention, in their own names, and for the protestant episcopal church in this state, do hereby solemnly declare and acknowledge the said Benjamin Moore, and no other person, to be their true and lawful diocesan bishop; and that respect and obedience ought of right to be paid to him as such."

Here then is the deliberate judgment of the tribunal who alone were competent to decide this question, expressed with a certainty and precision that puts all doubt and cavil to flight; and with an unanimity honourable to the church. On this decision alone, even without an examination of the grounds on which it rested, I might safely have relied. I might have contented myself with taking up the journals of the convention, and reading from them the proceedings referred to, and have confidently asked this court, whether they were prepared to force upon the episcopal church of this state, as their diocesan, one whom the ecclesiastical authority of that church had solemnly disclaimed as such? But as I did not choose to leave bishop Moore's diocesan rights upon the mere *de facto* exercise of them, so neither did I think it proper to put the claims, that have been urged in behalf of bishop Provost, upon the mere decision of the convention. I have, therefore, superadded to both, the argument I have thus far delivered, for the purpose of convincing the court, not only that I do not rely on the mere naked maxim *ita, ex est*, but that in the reason, and nature, and fitness of things it could not possibly be otherwise.

The second question, arising under the head of jurisdiction, which I propose to discuss, is this: whether bishop Moore, even if he was not the *diocesan*, but only the *coadjutor* bishop, had not equally jurisdiction of Mr. Jones's case?

Allowing then, for the purpose of the argument I intend now to urge, that bishop Moore was merely a coadjutor bishop, I proceed to show, that in that capacity he had precisely the same cognizance of the case we are examining, as if he had been the diocesan. That he was either the one or the other has not hitherto been disputed. I give Mr. Jones and his advocates the choice of the character in which

bishop Moore shall be considered. If he was either, it is enough for me; if he was either, I shall prove Mr. Jones to be in deep rebellion against the very authority of his church, to which, before God and man, he in the most solemn manner promised obedience. I shall prove this in two ways. First, from the opinion of the house of bishops, which has been so much relied on by the other side; and secondly, from the intrinsic power and duties of a coadjutor bishop.

The house of bishops, after stating that they could not recognize bishop Provoost's resignation as a valid or effectual act, do, nevertheless, declare their readiness to consecrate to the office of bishop of the church in this state, any person who shall be presented to them with the requisite testimonials. "But," they add, "this house must be understood to be explicit in their declaration, that they shall consider such a person as assistant or coadjutor bishop, during bishop Provoost's life, although competent in point of character, to all the episcopal duties; the extent in which the same shall be discharged by him, to be dependent on such regulations as expediency may dictate to the church in New-York, grounded on the indisposition of bishop Provoost, and with his concurrence." Bishop Moore was then *coadjutor* bishop, and as such, *competent to perform all the episcopal duties*; subject, however, as to the extent to which he should discharge them, *to any regulation prescribed by the church with bishop Provoost's concurrence*. Now, if the convention, with the concurrence of bishop Provoost, had directed that bishop Moore should exercise the episcopal duties to their utmost extent, that is, that he should exercise all of them, there could be no question about his right to have done so according to this opinion. I shall therefore show, that the convention *did regulate*, and that bishop Provoost *did concur*. The convention, immediately before the election of bishop Moore, declared that the church was "destitute of a bishop." They had no one then who could perform any of the episcopal duties: all were suspended. In order, however, that the exercise of these duties might be resumed, they elected bishop Moore. Bishop Provoost had before exercised those duties, but he had resigned them, or if the gentlemen prefer the

phrase, he had *declined to act*. Bishop Moore was obviously chosen to do what bishop Provoost had declined doing. What was this? To exercise any longer his jurisdiction or episcopal duties. The *whole* was resigned or declined by him, and the *whole* was transferred to and was of course to be exercised by bishop Moore, who was elected to fill his place. Thus the convention did, in fact, regulate the extent to which bishop Moore should exercise the episcopal duties in this diocese, and have plainly declared it to be their intention, that they should *all* be discharged by him.

The concurrence of bishop Provoost in this regulation, is equally manifested, as well by his resignation, as his subsequent acquiescence in the extent to which bishop Moore did discharge the episcopal duties. That he discharged the whole is not disputed. Can there be stronger evidence of his concurrence in the acts of bishop Moore, on the part of bishop Provoost, than that he, himself, had declined to perform them; that with his knowledge the convention had exonerated him from doing so, and had appointed another to fill his station, who for years had been in the continued performance of those very duties which he had requested to be relieved from? What did bishop Provoost ask the convention to do? To take back his episcopal jurisdiction, and of course give it to another. They did both with his knowledge, and he therefore gave to the regulations of the convention on this subject, his full concurrence.

This acquiescence, though on the part of bishop Provoost, I shall be told, was while he was ignorant of his real situation, and when he supposed that he was actually divested of all diocesan power. If he had read the journals of the convention of his church, with as much attention as he appears afterwards to have read Mr. Ireland's scurrilous pamphlet, he would have been earlier and better instructed in what he seems to have since then considered his duty. Why he did not do so, I leave for those to explain who make this neglect an apology for his conduct. Insufficient however as this excuse is, for every man is bound to know what belongs to his official station, I shall show that bishop Provoost was awakened from the ignorance or misapprehension under which he

had for years laboured, in time to have arrested the proceedings against Mr. Jones, if the right to do so belonged to him. He had sufficient notice of the measures which were about to be taken against this unoffending victim, as he is termed, to have rescued him from the persecutions of his enemies, as the tender hearted apologists of schism are pleased to call the wholesome discipline of the church.

Dr. Richard C. Moore, in his testimony, or more properly speaking, in the *address* which he has strangely made a part of it,* informs us, that on receiving his summons to attend as one of the presbyters, before the bishop, for the trial of Mr. Jones, he made bishop Provoost acquainted with it. "When I received," says he, "the letter enjoining my attendance at this time, I waited upon bishop Provoost, and requested him to inform me whether his concurrence to the measure had been obtained. He assured me, without any hesitation, that he had never been consulted, consequently, that he could not have concurred." Mr. Jones too, in his *System of Intolerance*, p. 53, 54, states, that he gave notice to bishop Provoost, of the proceedings that had been instituted against him, and called upon him as his "rightful and acknowledged diocesan," to give him the necessary directions for the regulation of his conduct. To this, bishop Provoost replied, that *he considered any interference of his in the affair would be premature*. Thus were two opportunities afforded to bishop Provoost for the assertion of his diocesan control over bishop Moore, if he really possessed it. But instead of taking a single step for this purpose, he sits with folded arms, a calm spectator of proceedings, which he is afterwards pleased to say, were "totally unauthorized by the constitution and canons of the church."† If he thought so, why did he not prevent them? Why did he wait till his coadjutor bishop, if he considered him such, together with his presbyters, over whom it was his duty to watch, and warn them from falling into error, had involved themselves in the guilt of violating, not only the laws of the church, but, to use

* See Dr. Moore's testimony, p. 168.

† See *System of Intolerance*, p. 71.

his own words, even "the principles of our religion" itself? I know not how to reconcile this opinion of bishop Provoost with his conduct, without supposing, as I am bound to do, that there is some mistake about it. The expressions, just mentioned, must have been extorted from him, under a strong irritation of his feelings, excited by the partial and discoloured statements of those, who could only hope to gain his favour by deception: they could not have been the result of his deliberate examination and reflection. The inference, on the contrary, which is to be fairly drawn from his permitting those proceedings to go into effect, without even expressing his disapprobation of them, or even a doubt about their correctness, is, that he did virtually concur in the course that was pursued, however much he might have been made dissatisfied with its result, by artful misrepresentations or insidious appeals to his feelings.

This conclusion is strengthened by the letter of bishop White to Mr. Jones, before referred to. "Since then," says he, "the bishop [Provoost] had declared to the convention his design, grounded on indisposition, of not performing any of the [episcopal] duties; I think, that bishop Moore's performance of them has been authorized by that declaration; and will continue to be so, until the exercise of jurisdiction shall be resumed by bishop Provoost, under the same solemnity with which it was formerly declined; that is, by a communication to the convention." Bishop Provoost acted, and no doubt, intentionally, in conformity to this opinion, and thought, as he was correct in doing, that if he was even the diocesan, still, that having relinquished the right to act as such, he could not resume his authority until he had made *a communication to the convention* for that purpose: and that consequently all bishop Moore's acts in the mean time were valid.

Bishop Provoost took no step whatever towards a resumption of his diocesan authority, until he made the communication to the convention, which has been already noticed. And even in that, he goes no farther than to offer his concurrence "in any regulations which expediency may dictate to the church." Until this period then, whatever had been

performed under the authority and directions of bishop Moore, was effectually done, and that no alteration then took place in his character, and the nature and extent of his jurisdiction, has been already shown.

But again, according to the opinion of the house of bishops, bishop Moore was *competent to all the* episcopal duties: the extent, however, to which he was to discharge them, might be limited or regulated by the convention, with bishop Provoost's concurrence. Now, suppose the convention made no regulations on the subject. Then how would the matter stand? Bishop Moore was competent to *all* the duties, but the convention might, with bishop Provoost's concurrence, restrain him to the performance of only certain specified parts. As he was competent to all, however, he might exercise all till this restraint was imposed. If it never was imposed, then his competency to perform all continued. Unless too, the convention did regulate, there was nothing in which the concurrence of bishop Provoost could be required. It is apparent, therefore, that if the convention made no regulations, no concurrence could of course be necessary, and bishop Moore would consequently remain in the full exercise of all the episcopal duties.

If too, it was intended, both by bishop Provoost and the convention, that bishop Moore should take upon himself all the episcopal functions, which has been shown was the case by the resignation of the former, and the election of the latter, to what purpose was it necessary for the convention to make any further regulations on the subject? What, in short, was left for them to regulate? After bishop Provoost had, by his resignation, declared his wish to be relieved, not from a part, but from the whole, of his episcopal duties, and the convention had granted his request, by appointing another who was capable of performing the whole, and who accordingly did so, would it not have been idle to ask bishop Provoost's concurrence in the very arrangement which he had himself desired, and which had been made at his request? If on the contrary, bishop Provoost was only to have been relieved from a portion of his duty, then, inasmuch, as he might prefer one part to another, there would be a propriety in asking

his concurrence in any plan the convention might wish to adopt, in order to apportion between them their respective duties; but when all were renounced by one, and assumed by the other, that propriety could no longer exist; so that if the convention were to regulate, and bishop Provoost to concur, both were done. If they, however, did not regulate, and bishop Provoost did not concur, it was because both were unnecessary.

I now proceed to show that, independent of the opinion of the house of bishops, the *coadjutor* bishop, from the intrinsic nature of his office, has a right to perform every episcopal act, whatever: that whilst he is *coadjutor* he is vested with the whole diocesan authority.

There is a material distinction between a *suffragan* and a *coadjutor* bishop; the one acts under special and limited power imparted to him, from time to time by his diocesan, whilst the other has the full power of the diocesan himself. The *suffragan* stands in the place of the ancient *chorepiscopus*, who was appointed by the diocesan bishop who always resided in a city, to perform special episcopal acts in the villages and country within his diocese. "And hence, says Bingham, it appears that as their power was precarious, and depending upon the will of councils and city bishops, from whom they received it; so by this time, [A. D. 439] their authority began to sink apace in the church." Bing. ch. Ant. book 2d, chap. xiv. sec. 11. As early as the year of our Lord 360, it was decreed by the council of *Laodicea*, that such bishops "should do nothing without the consent and direction of the city bishop." This order, in consequence of their limited powers, went gradually into decay, and in the ninth century became extinct. Same book, and chap. sec. 12. In England, after the reformation, there was an attempt made to restore the *chorepiscopi* under the name of *suffragan* bishops, and an act of Parliament for their regulation was passed in the 26th year of the reign of Henry VIII. A. D. 1534. Bur: His. Ref. vol. 2, page 157. But they have there also, fallen into disuse, as their predecessors did in the ancient church, owing, probably, to the same cause. Bingham, speaking of the *suffragans*, says, that "none of them were

either to have or act any thing properly episcopal, without the consent, or permission of the bishop of the city in whose diocese he was placed and constituted. Now any one that compares this with the account I have given of the ancient *chorepiscopi*, will easily perceive that these *suffragans* were much of the same nature with them." Same book and chap. sec. 13.

Bishop Gibson, in treating of suffragan bishops gives the act I have just referred to, at full length, in which it is expressly declared, that suffragans shall have "only such profits, jurisdictions, power and authority, as shall be licensed and limited to them to take, do and execute, by any archbishop, or bishop of this realm, within their diocese to whom they shall be suffragans, by their commission under their seals." Of the situation of this order of the clergy, before the act already mentioned he says, in one of his notes, or commentaries, upon it, "there can be no doubt, but the persons received to be suffragan bishops in England, before the making of this act, were confined to the exercise of such *power only, as they had commission for from time to time;*" and, therefore, that the act "was only a *continuance* of them in their former state."

It is evident from this review of the history of suffragan bishops, that they have in all ages of the church, been an inferior and subordinate order of bishops, acting under and in conformity to the orders or directions of their diocesans, expressed in their *commissions under their seals*; of course, no episcopal act, performed by them, was valid without the concurrence of the diocesan thus previously given. In the case, however, of a *coadjutor* bishop, no such concurrence, as I shall presently show, was necessary; and much of the misapprehension that has taken place on this subject, has arisen from confounding these two characters together, which are entirely distinct.

For the purpose of preventing schism, and preserving the peace and unity of the church, the ancient rule was, "that in one city, there should be but one bishop, though it was large enough to admit of many presbyters." Yet to this rule as to every other, of a like kind, exceptions would naturally arise out of human exigencies. Accordingly "when it man-

ifestly appeared that the allowing of two bishops in one city, in some certain circumstances, and critical junctures, was the only way to put an end to some long and inveterate schism; in that case there were some catholick bishops, who were willing to take a partner into their throne, and share the episcopal power and dignity between them. Thus *Meletius*, bishop of Antioch, made the proposal to *Paulinus* his antagonist, who, though he was of the same faith, yet kept up a church divided in communion from him. I shall relate the proposal in the words of *Theodoret*. *Meletius*, says he, the meekest of men, thus friendly and mildly addressed himself to *Paulinus*: Forasmuch as the Lord hath committed to me the care of these sheep, and thou hast received the care of others, and all the sheep agree in one common faith, let us join our flocks, my friend, and dispute no longer about primacy and government: but let us feed the sheep in common, and bestow a common care upon them. And if it be the throne that creates the dispute, I will try to take away this cause also. We will lay the holy gospel upon the seat, and then each of us take his place on either side of it. And if I die first, you shall take the government of the flock alone: but if it be your fate to die before me, then I will feed them according to my power. Thus spake the divine *Meletius*, says our author, livingly and meekly; but *Paulinus* would not acquiesce, nor hearken to him." Bing. Antiq. ch. ch. Book 2. chap. xiii. sec. 1 and 2.

This was the origin of coadjutor bishops, and in the eloquent and pious appeal of *Meletius* to his intended coadjutor, we see that they come to be *partners of the same throne, and equal sharers in the episcopal power and dignity*: their joint flock was to be the object of *their common care*. Thus manifestly showing their equality of power and authority, which is also most aptly expressed by the term *colleagues*, applied to them by some of the fathers. Same book and ch. sec. 4.

Another exception to the rule requiring that there should be but one bishop in one city, arose from the inability of the city bishop or diocesan, to perform his duties, from old age or infirmity, in which cases he might take to himself a colleague or coadjutor, who was not however subordinate to him:

in any other sense; than that during his life, unless indeed he resigned, he could not become the sole or exclusive diocesan, but only in case of his survivorship. A number of instances of this kind are mentioned by Bingham in the section last referred to.

The same doctrine is distinctly laid down by bishop Gibson in his codex already mentioned. "It was, says he, an ancient custom in the church, that when a bishop grew very aged, or otherwise unfit to discharge the episcopal office; a *coadjutor* was taken by him, or given to him; at first, in order to succeed him; but in late times only to be an assistant during life: in such manner, however, that being ordained bishop, the whole care was vested in him." Gibson's Cod. Jur. Ecc. Ang. 1 vol. page 158.

The expression *whole care* here used, is of the largest and most comprehensive kind, for it embraces all the power and authority of every sort that can be exercised by the person to whom it is confided. The *whole care* of the parish belongs to the rector who is settled in it, that is all the rights and duties of rector belong to him. So the whole care of a diocese is the complete investiture of the person to whom it is given, with the entire diocesan jurisdiction.

An authority however, has been read by one of our learned opponents from Mr. Hargrave's notes on Coke Littleton, (note 3. folio 94. a) to show that the office of the suffragan, was to perform the spiritual offices of the diocesan, and that of the coadjutor was to superintend his temporalities or jurisdiction. But the authority referred to, establishes no such doctrine: on the contrary it is but a repetition and confirmation of that which I have just been advancing on this subject. "Suffragan bishops, says Mr. Hargrave, resemble the *chorepiscopi*, or *bishops of the country*, in the early times of the christian church." What they were I have already shown; "They should not, he adds, be confounded with the *coadjutors*, of a bishop; the *latter* being appointed in case of the bishop's infirmity, to superintend his *jurisdiction and temporalities*; neither of which was within the interference of the former." Now is it not plain that the difference here pointed out between the suffragan and the coadjutor bishop, is precisely what

I have been endeavouring to prove it was? The suffragan could not interfere with the jurisdiction or temporalities of the diocesan: that is, he had no power of his own to do any act, he could never interfere, or come in collision with his diocesan, because he could merely exercise the specific power which at any time his diocesan had delegated to him, when he became *functus officio*: all that he might attempt beyond that would be an absolute nullity. Not so, however, with the coadjutor: for to him the *interference* with the *jurisdiction* and *temporalities*, which words comprehend the whole diocesan power, both spiritual and temporal, was given; for he it was, who was to *superintend*, that is, to manage and direct the whole of both. Mr. Hargrave too refers, himself, to the very part of bishop Gibson which I have quoted, as *his* authority, and therefore if there is any contradiction between them, bishop Gibson must prevail. But there is not; they are perfectly consistent, and strengthen each other.

To make "assurance doubly sure" on this point, I would refer the court to another of the same gentleman's own authorities. I allude to the case of Narcissus, which he read from Potter on church government, page 465, to show that "in places where the people had a share in electing their bishops their election was void, unless it was approved, not only by their clergy, but by the neighbouring bishops." And the argument, I suppose, that is to be drawn from thence is, that inasmuch as the people, with us, have a share in electing bishops, our convention being formed *per clericum et populum*, no election of bishop can be good until the *neighbouring bishops*, that is the house of bishops, have *approved* of it; and that bishop Moore's election, as *diocesan*, is consequently void, because in that character they refused to recognize him and approve of his election. As I forgot to notice this authority, when I was on the part of this cause to which it will be applied, I will ask the indulgence of a single remark upon it here. The author is speaking of the elections of bishops, and the control, which at different times had been established over them, where they were *popular*, least improper persons might have been exalted to that high office. This control was, in some instances, vested in the neighbouring

Bishops, and in others, according to express canons, in "the metropolitan and the majority of the com-provincial bishops," page 467. These regulations, however, arose out of the peculiar circumstances of the times, and ceased with them, for they certainly do not now exist in the church in England, according to which that in this country is fashioned; and if they even did, as they would owe their force to being enacted by the proper ecclesiastical authority, to apply them to this country, it must be shown that they have been here ordained in the same way. Until, then, the house of bishops are invested with this metropolitan or controlling power over the election of bishops by the state convention, they can have no possible right to use it.

I return to the purpose for which I referred to the case of Narcissus, which was to show, that my learned friend's distinction between suffragan and coadjutor bishops is entirely unfounded, and exists only in his own fancy. "For, says Potter, when *Narcissus* bishop of *Jerusalem*, withdrew himself from his diocese, we are told, that the bishops of the neighbouring cities agreed to ordain *Dix* in his stead." Some time after this, *Narcissus* returned from the wilderness, where he had concealed himself, and was reinstated in his bishoprick by the consent of all parties; but he becoming, through his great age, wholly unfit to execute his episcopal office, the christians of *Jerusalem* prevailed upon *Alexander*, bishop of *Capadocia*, to undertake the care of their church, as the coadjutor of *Narcissus*, during his life, and afterwards to be their sole bishop," page 465. Now as *Narcissus* was *wholly unfit to exercise his episcopal office*, it follows, that he could neither perform its *spiritual* duties, nor manage its *temporal* concerns, and consequently, if the gentleman's doctrine be correct, the christians of *Jerusalem* ought to have got two bishops instead of one; a suffragan to have discharged the spiritual part of *Narcissus's* office, and a coadjutor to have superintended his temporalities. And yet they were content with one, who alone took upon himself the entire *care of their church*, for *Narcissus* was wholly unfit to execute any part of the episcopal office.

Thus, I hope, I have made it appear, that whilst the *suffragan* bishop could only act under the *commission* given to him, as occasion required, by his diocesan, the *coadjutor* was equal to the diocesan, and shared his authority when both acted together; but where the diocesan, by age or infirmity, became unable to act, or declined to do so, the coadjutor had, then, *the whole care* vested in him, and consequently succeeded to the whole episcopal jurisdiction.

The consequence of this reasoning is, that whether bishop Moore was diocesan, or coadjutor bishop, is a matter of perfect indifference; for in either case the whole care, or episcopal jurisdiction, of this diocese, was vested in and exercised by him, and of course his taking cognizance of Mr. Jones's case was fully within his jurisdiction.

But if, unfortunately, any doubts that I have not been able to dispel, should still hang over this subject, I think I have a right to ask, whether every construction is not to be made in favour of bishop Moore's diocesan authority? It has been peacefully and usefully exercised for years, and has, for the first time, been called in question by the lynx eyed vigilance of those who have penetrated every recess of subtilty and sophistry to find out objections to the validity of proceedings, where justice is only equalled, by the persevering effrontery with which they have been resisted. Can any one look calmly at the consequences of the doctrine which is urged against us? Bishop Moore could do nothing, say our adversaries, but with the concurrence of bishop Provoost, and he has concurred in nothing; therefore every thing that has been done by bishop Moore is a nullity. Every consecration by which he has dedicated a church to the service of God; every confirmation by which he has enabled the believer to assume upon himself his baptismal vows; every ordination by which he has increased the ministers of Christ, are to become but mere solemn mockeries: every act of the convention, over which he has presided, in short, every act that he has performed through the whole course of his diocesan ministration is to crumble into dust. When an arm of such powerful menace is raised against the peace, the order and security of the church, it is enough to excite the alarms, and at-

most appal the hearts of those who take an interest in her fate. But I do believe they may lull their fears to rest, for I do trust in God that I behold before me the redeeming spirit that shall arrest this uplifted arm, avert the parricidal blow, and wither the energies by which it would be directed.

The third question I shall make under the head of jurisdiction, is, whether a case existed between 'Trinity Church and Mr. Jones to which the 32d canon applied?*

The application which is to be made to the bishop under this canon is, "in cases of controversy" between ministers or assistant ministers, and the vestry or congregation to which they belong. Now it is objected, on the part of Mr. Jones, that there was no controversy between him and the vestry or congregation of Trinity Church.

It is of importance to every religious denomination, that it should have the means of regulating its own concerns. Among these, few can be of more importance than the mode by which the connection between ministers and their parishes should be created and dissolved. Whilst on the one hand the minister should not be made dependent on the mere will or pleasure of his vestry or congregation, so as to enable them to remove or dismiss him whenever their convenience or caprice might induce them to take such a measure; yet, on the other, a congregation ought not to be obliged to continue under the ministry of one who had become hateful to them, or whose usefulness had, in any measure, been destroyed. Whilst the relation between them ought to be put upon as permanent footing as the nature of things will reasonably admit, there ought to be some proper means provided in every church by which its ministers may withdraw themselves from their congregations, and congregations be relieved from their ministers.

Various cases may readily be imagined of uneasiness and dissatisfaction between ministers and their congregations, without any direct charge of criminality on either side: or if such charge could even be made, it may, sometimes, be more prudent to bring about a separation by gentler means, rather

* See the canon, p. 21.

than by resorting to those of a harsher kind. There can be neither reason, nor policy, in a minister's being continued in a congregation where he can no longer instruct by his example, nor edify by his teaching. Mutual usefulness is the bond of their union: whenever that is broken asunder, the connection itself is virtually dissolved. In all such cases domestic forums, established by the ecclesiastical authority of each church, are much better calculated for the settlement of whatever controversies may arise in congregations, than by leaving them unprovided for, to force the parties to appeal to the civil tribunals of the country. It is not there that the strifes arising out of christian relations ought to be heard: it is not by such a course that christian charity will be promoted.

Our church, sensible of the importance of these considerations, has endeavoured to provide for cases like the present, and for the purpose of having a rule as uniform as possible on this subject, the general convention passed the canon in question. Now by what means is it to be ascertained whether a controversy of the kind mentioned in the canon has arisen, or not? Must it not of necessity be by the parties themselves in the first instance, and in case of disagreement, the very forum that has been provided to decide between them? Can it be possible that the parties are to come to the civil tribunals first, to determine whether a controversy has arisen of which the ecclesiastical tribunal is to take cognizance? Is not this to rob such tribunal of all its power, of all its influence, and to forego the very benefits it was intended to secure? On all these points the canon itself affords the most satisfactory evidence. The interference of the bishop can only be required in "cases of controversy." The existence of them, if that should be denied or disputed by either party, becomes, of necessity, a matter of preliminary enquiry by the bishop, and may, indeed, be made so again before the bishop and his presbyters when met in convocation. So obvious was this course of proceeding that Mr. Jones spontaneously, as it were, pursued it. "This canon, says he, as is evident from its face and letter, provides for cases of controversy and differences which are bona fide between a clergyman and his

congregation; and that not merely a part of the congregation, but where the great body is opposed." P. 30 & 31 of System of Intolerance. And again in the same page, "the canon is totally inapplicable to the case in which I am concerned. No controversy; no differences, have taken place between the congregation, as a congregation, or between the vestry and me." Now as soon as the vestry had applied to the bishop, Mr. Jones tells us, page 48, that this objection was, together with others, "made the subject of a remonstrance to bishop Moore; and a protest was founded upon them against farther proceeding." The question was thus distinctly presented to the consideration of bishop Moore, who determined it, as he had a right to do. But he sent the protest to the vestry! exclaims Mr. Jones, and this, in the *management and spirit of a pseudo lawyer*, to apply to himself his own expression, he is pleased to consider as forming "a new precedent in the principles of jurisprudence. A judge upon the bench; the chief judge upon the bench, receives a plea in answer to a declaration, on a point of law; and sends it to the plaintiff, to receive instructions, as to the process which he shall pursue." Now unfortunately for this gentleman's display of his legal knowledge, this is precisely the course which is every day practised in our courts. Mr. Jones too, labouring under a similar error in the use of his law terms, tells us that his protest produced *a kind of demurrer* on the part of the bishop; but what precise kind it was, he has not deigned to inform us: it was certainly one not hitherto known in our jurisprudence, and our special pleaders will hereafter be indebted to Mr. Jones for its introduction, if they are only fortunate enough to find out what is meant by it, and how to apply it to any practical purpose. The truth is that his protest was in the nature of a plea, for whether differences did, or did not exist between the vestry and Mr. Jones was, with all due deference to his better judgment, a matter of fact, and not *a point of law*. But whether his protest is to be considered as a demurrer or a plea, is of no consequence, for in either case the vestry of Trinity Church had a right to see and answer it. And yet this right, founded on principles of natural justice, and sanctioned by the constant and uniform

practice of the courts from which he drew his comparison, is represented by Mr. Jones, as without *precedent*, and is actually produced by him as a proof of bishop Moore's co-operation with the vestry in "determined hostility" against him. But this is in perfect coincidence with the rest of his complaints, and the proofs produced by him in their support: the first are the offspring of that *green eyed monster that makes the very food it feeds on*, whilst the latter are supplied by a distempered imagination, aided, I fear, by something worse.

On receiving Mr. Jones's protest, bishop Moore, as it was his duty to do, transmitted it to the vestry, who had a right to be informed of its contents, and interpose an answer. This was done; the vestry inform the bishop of the grounds upon which they proceeded, and again call upon him to convoke his presbyters to decide between them and Mr. Jones.* The bishop, upon this determined, as every one, I think, will say he ought to have done, that the vestry had a right to be heard upon their complaint, especially as Mr. Jones might again make the same objection before the presbyters, that he had already done. They were convoked accordingly, and Mr. Jones renewed his protest before them; who, having heard the proofs and allegations that the parties thought fit to make, decided, that a controversy did exist, and acted accordingly.

This decision, thus made, by a competent tribunal, I might rely on as conclusive: but I will not: I will shew by a series of stubborn proofs, that neither sophistry nor eloquence shall be able to bend, that a case of controversy did exist between the vestry or congregation of Trinity Church, and Mr. Jones, which loudly demanded a separation from each other: Nay were I disposed to go farther, I should find no difficulty in showing, that Mr. Jones owes it to the clemency and forbearance of that body, that they did not of their own accord, dismiss him; or that they did not bring him to trial under a very different canon, the just consequences of which would have been, that instead of being a *suspended*, he would now be a *degraded* clergyman.

* See the resolution of the vestry, p. 29.

Mr. Jones's "*Solemn Appeal*" was published on the very eve of the meeting of the special convention that had been called to elect an assistant bishop. All eyes, it was well known, were turned to Dr. Hobart as the most suitable person for that station; and against him Mr. Jones, therefore, aimed his blows; first in secret, afterwards publicly. The last dire resort was the "*Solemn Appeal*," published for the express, indeed the avowed purpose of defeating Dr. Hobart's election. Unfair as this measure was in relation to that gentleman, who could have no opportunity of answering Mr. Jones's charges until they had accomplished the purpose for which they had been made, every consideration of that kind was lost in the pernicious and deplorable effects which such a publication was calculated to produce in the church, and the injury it might inflict upon the great cause of christianity itself. The attention of the vestry of the church was naturally and speedily directed to it. A committee was accordingly appointed to take the subject into consideration and report thereon.* This duty they performed on the 13th May, 1811, and their report was confirmed by the vestry. "The publication in question, say they, appearing to relate to matters, the cognizance and decision of which exclusively belong to regular tribunals, established by the canons of the church, the committee deem it improper to present those matters to the vestry in any shape by which their merits may elsewhere be made the subject of discussion. Nevertheless, in reference to the relation which subsists between this corporation and the junior assistant ministers employed by it, the committee deem it the right and duty of the vestry to notice, and, as occasion may require, to animadvert upon such of the public acts of those ministers, as may be calculated to affect the peace and welfare of the religious community with which they are united.

The committee having, in this view, considered the subject referred to them, are of opinion, that the pamphlet lately published by the rev. Mr. Jones, calls for the serious attention of this board.

* See the whole report, pages 2 and 3.

'The evident tendency of appeals to the public, on the subject of private differences between ministers of the gospel, must in all cases be to weaken the reverence and respect justly due to the clerical office, to destroy its influence, impair the discipline and government of the church, and to bring reproach upon the cause of religion." And again, " That a course obviously involving consequences of such deep importance to the character and welfare of the church, should have been resorted to by one of her ministers in the first instance, without even an experiment of the efficacy of that sanctioned and prescribed by her canons, adds to the grief which every reflecting mind must feel on this occasion, and leaves less room for extenuation than might exist under other circumstances."

Could a more dignified and moderate course of conduct have been pursued by the vestry, or one more respectful to Mr. Jones? Upon Mr. Jones's complaint against Dr. Hobart they forbear to express any opinion, lest it might have an effect on the tribunals to whom the cognizance of them belonged, and before whom their merits might be made the subject of discussion. But the tendency of the publication to *disturb the peace and welfare of the church, to weaken the reverence and respect justly due to its ministers, to impair its discipline, and above all to bring a reproach upon the cause of religion*, they thought they had a right to "animadvert upon;" and had they not exercised that right they would have been wanting in their duty. They did, however, exercise it, temperately, but explicitly. Mr. Jones was furnished with a copy of this report, in which his conduct was placed before him in a manner calculated to excite his most serious reflections. An opportunity was presented to him to review and deliberate upon what he had done: a *locus pœnitentiæ* was still afforded him. The rebuke of the vestry was mild but strong enough not to be mistaken.

As the vestry intended to censure Mr. Jones, in the expectation that it would produce something, on his part, which might expiate the offence he had committed, and stop the mischief his publication was calculated, if not designed to produce, it remained with Mr. Jones to take such mea-

tures as would have that effect. On the 13th of June, 1811,* a committee was appointed by the vestry, among other things, "to take into consideration the present situation of the church," which was perfectly understood to refer to the *disturbed state of the church produced by the plaintiff's book*.† It does not appear that a formal copy of this resolution was sent to Mr. Jones, nor was it at all necessary that it should; but as Mr. Jones had one or two active friends in the vestry, it is probable that he was informed of it by them, and even knew the precise time at which this committee would report, for he addressed a letter to the vestry at the same meeting to which they made their report, and which, of itself, contains the most conclusive evidence of the existence of a controversy between the vestry and himself. This letter‡ is dated the 4th September, 1811, and was delivered to the vestry at their meeting on the 5th. "As the subject," says Mr. Jones, "of the unhappy differences existing in the church, has been formally brought to the cognizance and investigation of the vestry, I must beg to be indulged with the liberty of making a few remarks." Again, "when you were pleased to communicate to me, by your clerk, certain resolutions, expressive of your disapprobation of the mode of making my grievances known, the thought suggested itself to me, that possibly an answer might be expected; yet upon due reflection, &c. it appeared the most respectful mode to submit in silence to what I could not but lament was a difference of sentiment from what I felt myself compelled to entertain." He concludes by declaring his readiness to adopt any measures, which their "wisdom may devise, for the restoration of peace and harmony to the church." Thus Mr. Jones, himself, acknowledges that *unhappy differences existed in the church*, in consequence of his publication; that he understood the resolutions of the vestry, of the 13th of May, to be, as they were intended to be, a disapprobation of his conduct; but that as for himself, he thought the vestry entirely

* See the testimony, p. 196.

† See Mr. Laight's evidence, p. 224.

‡ See the letter, p. 27.

wrong, and himself entirely right, and that he, therefore, could not but lament *the difference of sentiment* between them on this subject, which he felt himself compelled to entertain. Here then was, at least, a pretty decided difference of opinion. Ah, but, says Mr. Jones, in the "spirit and management" of something more than a "pseudo lawyer," of what might be called of a quibbling attorney, however the vestry and myself may differ in opinion, there can be no *controversy* whilst I remain silent.* Therefore, he determined upon silence as the *safest mode* of avoiding it, for, says he, "had I attempted to answer, immediately I should have been engaged in a controversy with the vestry." And he really suspects the vestry of contriving together to draw from him an answer, as "a plan artfully laid to ensnare" him. Thus do distrust and suspicion forever weave their web in his jealous mind. Thus, truly, do we see verified, that whenever a man becomes an *Ishmael* himself, he at once supposes that the hand of every other man is against him in return.

The vestry, as we have seen, censured Mr. Jones in May. In June, nothing having been done by him to remove the cause of this censure, a committee was appointed to devise and report what further measures ought, on their part, to be taken, which they did on the 5th of September, 1811. In the mean time, although there was a *difference*, according to Mr. Jones's own admission, between him and the vestry, on points of vital importance, yet there was no *controversy*; because, although the vestry had complained against him, and although he had done nothing to remove the ground of their complaint; yet, forsooth, as he continued silent, as he neither justified himself to the vestry, nor recriminated them in turn, but merely persevered in his own opinion, no controversy had taken place. "It did not occur to me," says Mr. King,† and I believe it would not to any sensible man, that when "the parish complains, but the clergyman does not reform, but persists in his delinquency," and thus "affords to his parish continual cause of dissatisfaction and complaint,

* See his *System of Intolerance*, p. 21.

† See Mr. King's testimony, p. 254.

that because he does not complain of them, that therefore there is no controversy or difference between them. But it did seem to me to be true, that where one party violates his duty, and the other, having an interest in its performance, complains of its violation, that a difference exists between them." And I barely beg leave to add, that I believe there can be as little doubt that such a difference would amount to a controversy, within the meaning of the 32d canon; and that is precisely the one which had arisen between the vestry and Mr. Jones.

On the 5th of September, however, Mr. Jones did *answer* the vestry, and justified and defended himself against their disapprobation of his conduct: he clings to his own opinion, in opposition to theirs, as one, which, after the opportunity that had been given for reflection, *he felt himself compelled to entertain*. From this period, then, according to his own admission, he "was engaged in controversy with the vestry." At this period, the committee on the state of the church made their report.* They advert to "the division, disorder, and other mischiefs, which have been produced by the publication of the" "Solemn Appeal," and to "the disorderly state of Trinity Church and its chapels, proceeding from the misbehaviour of Mr. Jones." The committee then say, they "are constrained to declare, that in their opinion, the peace of the church cannot be re-established, so long as the connexion between the vestry and the rev. Mr. Jones remains undissolved." They therefore express it as "their opinion, that the connexion with Mr. Jones ought to be dissolved," and leave it to "the vestry to consider and determine whether a due regard for the peace and prosperity of the church, does not require of them, without delay, to have recourse to the means provided by the canons to effect this dissolution." The vestry proceeded to the consideration of this report, and agreeing with the committee in the view they had taken of the subject, and having Mr. Jones's written pledge lying before them, that he was ready to adopt *any measures, which their wisdom might devise, for the restora-*

* See the report, p. 4.

tion of peace and harmony to the church, they passed the following resolutions:—

“Whereas differences and controversies exist between the rev. Mr. Cave Jones, one of the assistant ministers of this church, and this vestry, arising out of the publication, entitled, “A Solemn Appeal to the Church,” which are of such a nature, as cannot be settled between them;

“Resolved, therefore, that application, representing the same, be made on the part of this board, to the bishop of this diocese, pursuant to the 32d canon of the general convention.”

What other consistent course could the vestry have pursued towards Mr. Jones? They considered him as the cause of *division, disorder, and other mischief in the church*, which he not only took no measures to stop, but persisted in the vindication of his conduct. To have continued him in a situation, where he could best foster and increase the evils complained of, and under which the church was suffering, would have been madness. They, therefore, rightly determined that the only means of restoring the peace of the church, was by dissolving a connexion which could only prolong the mischiefs they deplored. The result has shown their wisdom; the reign of peace and harmony is again established in the church, and, I trust, will be confirmed by the judgment to be pronounced in this cause.

It is surely unnecessary to look for further evidence of the existence of a controversy between the vestry and Mr. Jones. But if more is wanted, it is at hand. In the united testimony of the witnesses, who have been examined to this point, there is enough to satisfy scepticism itself.* I will not stop to recapitulate it, but I venture to say that it will come even within Mr. Jones's own rule,† by establishing that the controversy between him and the congregation, was

* See testimony of Mr. Clark, p. 204. Mr. Kingsland, p. 210. Mr. Kemper, p. 211. Mr. Rodgers, p. 214. Mr. Ogsbury, p. 216. Mr. Swords, p. 219. Mr. Laight, p. 224. Mr. Bowden, p. 243.

† See p. 30, 31, *Syst. of Intel.*

not confined *merely to a part*, but that *the great body* of it stood opposed to him. To such a case he, himself, admits that the canon applies, and such a one is fully made out. And yet, for this man, in the face of the documents to which I have referred, his own acts, his own declarations, and the overwhelming mass of other evidence, to contend, not only before the bishop and his presbyters, but again before this court, that there never has been a controversy between the vestry and him, requires a degree of matchless impudence, to which, I hope, few persons besides himself would be equal.

If, however, a controversy existed between the vestry and Mr. Jones, still we are told that no measures were taken to have it "settled" or brought to a "favourable termination," without which the canon could not apply.

I ask, on this, as on the question whether there was a controversy or not, who was to decide whether it could be settled or favourably terminated? And I answer to this, as I did to that, the parties themselves first; the bishop and his presbyters finally. Can this court be better judges on that subject, than the parties and the tribunal to whom it was referred? Is not the evidence from both, satisfactory that no such settlement could be made, and do not the witnesses, to whom I have just referred, confirm it? The very nature and cause of the controversy show, indeed, that it could not be settled. Mr. Jones was jealous and envious of his associate ministers, he had imputed to them the most unworthy motives, and had endeavoured, by all the means within his power, to draw upon them the displeasure, the distrust, and even the hatred of the congregations committed to their common care. The vestry foreseeing the tendency of this conduct on the part of Mr. Jones, after remarking upon the consequences of his publication to the church at large, and to religion itself, with great propriety proceed to mark out its effects upon Trinity Church in particular.

"In the case, say they, of an associated ministry, like that of Trinity Church, evils more immediate and pernicious are to be apprehended, inasmuch as the people will naturally take part in the disputes of their pastors, their own passions

and prejudices will be brought into the contest, and these will soon banish from the mind that peace and good will, which can alone dispose it to the reception of religious instruction.”*

After this expression of their sentiments by the vestry, after they had thus plainly pointed out to Mr. Jones, the *immediate and pernicious evils* which would follow the fatal step he had taken, does he attempt to retrace it, does he acknowledge his error, or manifest, on any occasion, the least disposition to prevent the misfortunes which the vestry had so feelingly deplored? No: on this subject he plainly tells them, we hold different opinions: I feel myself compelled to maintain mine, and therefore there can be no compromise, no settlement between us. When he was told, in the language of sorrow, by a distinguished friend of the church,† of the *mischief and schism* that had arisen in it from his publication, he exultingly exclaimed, *I am not sorry at all for having published*, and then endeavours to throw the odium on Dr. Hobart, which was chargeable on himself alone.

Mr. Jones having taken his stand, and insisting upon his right to do what he had done, shut the door against any settlement of the controversy between him and the vestry. Nothing was left but to induce him peaceably to resign a situation in which he could be no longer useful, or to compel his removal by the proceeding which was finally adopted. Mr. Jones, himself, admits that various overtures were made to him for that purpose. His friends, he says, “wished a compromise to take place,” and suggested this to individual members of the vestry, whose answer was, “that they wished me to make a proposition to the vestry. To that measure, when hinted to me, my uniform answer was, “I have no propositions to make. No desire for change exists on my part; and therefore I have no object to obtain. I am ready, however, to pay a respectful attention to any measures which the vestry may see proper to propose.” Now, it is worthy of remark, that this high minded gentleman, who

* *Report of May, p. 3.*

† *See Mr. Swords's testimony, p. 210.*

Being the offending party, demands, with a lofty pride, the right to receive propositions from the one whom he had offended, was actually, at this very time, setting on foot a project to enlist the influence of certain individuals in the vestry to bestow upon him the rectorship of the largest church in the city. If he could have got the vestry to have made this proposition, there is no doubt but that it would have received his most profound and *respectful attention*. These were the terms of *amicable adjustment*, to which he probably alluded in his letter to the vestry of the 5th of September, into which he professed himself *ready to enter*, and which he thought would be *consistent with his character as a gentleman and a christian*. How far his conduct comported with either, when in his communications to the vestry, through his friends, he took the high ground of receiving only their propositions, whilst he was secretly exerting himself to obtain the rectorship of St. John's, I submit to those who can properly appreciate both those characters. That this was the fact, appears from the testimony of Mr. William Hamersley.*

Mr. Hamersley says, that Mr. Jones called on him a few days "subsequent to bishop Hobart's consecration,† and observed to the deponent, that he presumed the deponent was acquainted with the unfortunate differences in the church, or which beset the church, and after some farther conversation, the plaintiff observed to the deponent, that he wished the matters *could be so far settled*, that he, the plaintiff, might be assigned to *St. John's Church*, as that in which he had the most personal friends, conceiving that *by such an arrangement the differences in the church would be healed*." Mr. Hamersley further says, "that he stated to the plaintiff, that he regretted that his pamphlet had ever appeared: to which the plaintiff replied that *that was matter of opinion*." That "the conversation terminated by a request of Mr. Jones, that the deponent would speak to some of the vestry, on the subject of assigning him, the plaintiff, to St. John's Church,

* See Mr. Hamersley's testimony, p. 130.

† He was consecrated on the 29th of May, 1811.

and the deponent told the plaintiff that he would do so, and as he apprehends, he at the same time told the plaintiff that there his interference must cease; and the deponent agreed to speak to Garrit Van Wagenen, David M. Clarkson, and Frederick De Peyster. The deponent says, that the plaintiff had previously spoken to Mr. Van Wagenen, and, as he believes, to Mr. De Peyster on the same subject."

Thus could Mr. Jones, at one moment, erect his crest with swollen pride to the vestry, and tell them, it is beneath my character as a gentleman and a christian to make any propositions to you, whilst at another, in order, good meek soul, *to heal the differences in the church*, though he has since declared there were none, he could bend to the humble office of begging himself, and asking his friends to beg for him, the favour of individual members of that same vestry to set apart St. John's Church, with a suitable endowment of course, and elevate him to its rectorship: a situation which would have been more respectable and lucrative than that of any other clergyman in the city. How fit must he be to teach others the christian virtue, humility, who can set so bright an example of its exercise in himself! My heart sickens within me at the thought of so much pride, vanity, and hypocrisy being united in one, whose duty it was, by his example, to show, and his precepts to teach the folly and the sin of these hateful vices.

During the time, as I presume it was, that Mr. Jones was pursuing the laudable scheme which I have just noticed, and after he had refused to make any propositions to the vestry, he informs us,* that "something like a regular negociation was commenced by one of the active members, not indeed with authority, but, as he said, on his own responsibility. He wished to know what compensation would be accepted. He desired a very valuable and influential friend, who also acted informally, to use his endeavours to get me to name my terms. This was frequently repeated, and thrown into different shapes. But it was all a snare. It was a lure thrown out to entrap me. Had I, for one moment, listened

to this plan, immediately I should have sold myself into the power of my opponents." Thus, again, does the jaundiced eye of jealousy disorder the friendly attempts that were made to smother a controversy that could not be settled, by inducing Mr. Jones to name the terms upon which he would himself agree to a separation, which the peace and harmony of the church had rendered indispensable. These efforts, however, which had so manifestly in view the interests of the church on the one hand, and the saving of Mr. Jones's feelings on the other, are construed by him into *snarcs* and *lures*, spread around him to catch his unwary feet, and make him the instrument of *selling himself into the power of his opponents*. To a mind thus prolific, in the phantom of imagined hostility towards him, the approach is difficult: sincerity is treated as contrivance, and the proffer of conciliation as an artful attempt to deceive. With such a man, it must be evident, that the controversy in question, could never have been settled: that there was no choice left, but to resort to a competent tribunal, who could cut the knot of an union that could not be untied by mutual consent.

Another objection to the application of this canon to Mr. Jones, is, that the controversy ought to be, not between the vestry and him, but between the congregation and him, because, the words of the canon are, that it shall "apply also to the cases of associated rectors and assistant ministers and their congregations." Now, says my learned friend, as Mr. Jones was an assistant minister, you must show that a controversy existed between him and the *congregation*; for the vestry can have nothing to do with it. This criticism partakes of the same character of some others, on which I have before remarked. It is an attempt to make a distinction where none exists; and I should have been disposed to have passed it by in silence, had it not, after it was first mentioned, been repeated with a gravity that seemed to entitle it to some notice.

Can it, for a moment, be imagined, that it was intended by this canon to make one rule for the minister, and another for the assistant; and that whilst the former dealt with the vestry, the latter was to communicate only with the congre-

gation? Would there be either wisdom or convenience in such a rule? If an assistant minister should neglect his duty, or otherwise misbehave himself, ever so grossly, and the vestry should undertake to remonstrate with him, he has nothing to do, according to this construction of the canon, but to open it, and tell them, you have no right to complain; it belongs to the congregation, and as long as they do not convene in a body and censure me, you must be silent. This would be a proceeding unknown to our form of church government, and would be unworthy of its discipline. The vestry are, in fact, the congregation; that is, they are chosen by, and represent them, and have the management of all their affairs of this kind. By whom was Mr. Jones called? By a vote of the congregation? Surely not; but by the vestry, who having given him his situation in the church, it must be by their agency that he is to be removed from it. The words vestry or congregation, are, throughout the canon, used as convertible terms. Look at the very title of the canon. It is one, "respecting differences between ministers and their *congregations*;" and it might as well from this be contended, that even in the case of a rector or minister, the differences must be between him and his congregation, as distinct from the vestry. Again, the first sentence of the canon shows, that vestry and congregation mean the same thing. "In all cases of controversy between ministers who now, or may hereafter hold the rectorship of churches or parishes, and the *vestry or congregations* of such churches or parishes," &c. In short, the attempt might as well be made to show that the words rector and minister were not used as synonymous.

The next objection which I shall consider, though it is of a more serious character than the last, will, I am confident, be shown to be not less groundless. It is this: that the canon is inapplicable, because it was passed after Mr. Jones's call, at which time, it is insisted, his rights were fixed, and could not be affected by any law of the church subsequently enacted.

In support of this position, or rather as the foundation of it, it is urged that Mr. Jones's call was for life. I propose to

show, in the first place, that the fact is not so; and secondly, if it even is, that still he is liable to the operation of the canon.

Mr. Jones's call has been relied on to show either in itself, or connected with the evidence of some of the witnesses in the cause, that the tenure of his office was for life. The call,* however, proves nothing, perhaps, one way or the other. The committee inform him that they are commissioned by the vestry of Trinity Church to invite him "to accept the office of an assistant minister in the churches under their care, upon the same terms on which the other assistant ministers are placed: the salary is five hundred pounds per annum." There is nothing in this then that proves that Mr. Jones was called for life: all that is said upon the subject is, that he was to come upon the same terms with the other assistant ministers, which, from what immediately follows, would seem to relate to the salary only; that is, that he should be on the same terms with them in regard to the salary, which was five hundred pounds a year. But allowing the words a larger sense, and that he was, in every respect, to be upon the same terms with the other assistants, it would still remain to be shown that they were called for life. Now it is a little remarkable, considering the industry with which witnesses have been collected by Mr. Jones, that the only one that I recollect, who says a word on this subject, is Mr. Van Wagenen,† who speaks in the most vague manner imaginable. "He *always understood* the call was for life, except some malpractice were proved." I put out of view the testimony of those witnesses who speak of the tenure of a rector; for although that may be for life, it does not follow that the assistant ministers of Trinity Church held their offices on the same terms. The true rule on this point is the one mentioned by Mr. King in his answer to the ninth direct interrogatory‡, that the contracts between the vestry and the assistant ministers expressing no particular tenure they hold during pleasure.

* See the call, page 24. † See page 120. ‡ See page 256.

Conscious of the weakness, or rather the want of evidence, to show that Mr. Jones's call was for life, we were told by the opening counsel, that the vestry have themselves not only admitted this, but likewise that the 32d canon could not apply to Mr. Jones's case. If this be so, I do concede that the evidence is not only competent, but that it ought to be conclusive against us. Since, however, the acts of the vestry are cited as evidence against them, I have a right to show not only that they do not afford the proof of what they are supposed to do; but directly the contrary: that instead of establishing Mr. Jones's call to be for life and the inapplicability of the canon to him, they clearly show that his call was during pleasure, and that the canon was as clearly applicable to his case. If I can do this, then the evidence is as competent and conclusive for us, as it would have been against us. With these remarks let us enter upon the examination of the evidence referred to. It is to be found in the report of the vestry* of the 5th September 1811, and is as follows:

"From the nature and terms of the engagement between the vestry and the rev. Mr. Jones, there can be little doubt that the same may, for sufficient cause, at any time be dissolved by either party, it being presumed, that the canons of the church do not affect contracts which had been previously made."

Now, says my learned friend, if the tenure of Mr. Jones's office was *durante bene placito*, the vestry might, at any time, without any reason for it, have dismissed Mr. Jones; but here they admit they could only have done so for *sufficient cause*, which shows that in their own opinion he held his office for life. Let us see if this be either the obvious sense of this part of the sentence, or if, indeed, it is capable of being tortured into such a meaning.

The committee, in whose report the passage is contained, having determined that the connection between the vestry and Mr. Jones ought to be dissolved, suggest two modes by which it may be done: one by the vestry themselves, the

* See page 4.

other by applying to the bishop for the purpose. With regard to the first, they then say, there can be no doubt of the power of the vestry, because, from the nature and terms of the engagement between them, it may, at any time, for sufficient cause, be dissolved by either party; that is, the vestry may put an end to it on their part, and Mr. Jones on his. Now if this contract was for life, I apprehend it could not be dissolved even for *sufficient cause* by one of the parties only. To do this, without the interference of a competent tribunal, the act must be joint and mutual. The vestry however, expressly declare that either party may, whenever they think they have sufficient cause, and of which they must respectively judge for themselves, dissolve this contract; and if either party could do this, it is precisely the description of a holding at pleasure, and is utterly incompatible with any tenure of a more stable kind. As to the words *sufficient cause*, which are supposed to contain the magic spell by which this contract is converted into one for life, they apply as much to one party as the other, and merely import that though each has the right of withdrawing from the other, whenever they please, yet that in good faith and mutual respect, this ought not to be done wantonly, but for what each should deem an adequate or sufficient cause.

Having, I hope, thus shown, that the words relied upon, instead of amounting to proof of the vestry's admission that Mr. Jones's call was for life, establish the very reverse, I proceed to strengthen this conclusion, and to show, besides, that there is a similar mistake in supposing that the vestry have also expressed their opinion that Mr. Jones's case did not come within the canon under consideration.

The committee, as a reason for thinking that the vestry could of their own accord discharge Mr. Jones, add, "it being presumed that the canons of the church do not affect contracts which had been previously made." Here, the gentleman exultingly exclaims, is, a distinct recognition by the vestry of the principle for which he contends, for they declare that the canons *cannot affect a contract previously made*; and as Mr. Jones's was made before the thirty second canon was, it of course, says he, cannot be affected by that canon.

This is one of the hasty conclusions at which my friend has been too apt to arrive in the course of his argument in this cause. From the same premises, I shall, however, come to a very different result.

The committee, it will be recollected, are speaking of a dissolution of the contract between the vestry and Mr. Jones, and had expressed their opinion that it might be dissolved by either party, according to its own terms, which they supposed could not be altered by any subsequent canon. The canon which the committee had in view, however, was not the *thirty second*, but the *thirtieth*,* which was also passed after Mr. Jones's call, and provides, that "when any minister hath been regularly instituted or settled in a parish or church, he shall not be dismissed without the concurrence of the ecclesiastical authority of the diocese or state." "Nor shall any minister leave his congregation, against their will, without the concurrence of the ecclesiastical authority aforesaid." The general convention who passed this canon, meant to disapprove of those contracts between ministers and their congregations by which they might, at the pleasure of either, separate themselves from each other; and accordingly prohibits the latter from dismissing the former, or the former from leaving the latter without the concurrence of ecclesiastical authority. Now the reasoning of the committee may be put thus: the contract with Mr. Jones may clearly, according to its own nature, be terminated at the pleasure of either party, and we suppose this right must still continue, notwithstanding the canon last referred to, for as that was passed after the contract was made, it cannot affect any rights settled by the parties under that contract: in other words, they had a right to make the contract which they did, because no rule or law of the church prevented it. Afterwards, however, such contracts were prohibited, and of course could not, from that period, be made; but this prohibition could not retroact on a contract previously made, and which it was lawful at the time to make, so as to render it invalid. The vestry may, therefore, still exercise all their rights un-

* See page 20.

der the contract with Mr. Jones, notwithstanding this canon; and if they could by their own act dismiss him before its passage, they can equally do so since. This was the argument of the committee, and of the vestry who adopted it, and to my mind it is conclusive. But whether their reasoning was right or wrong happens to be entirely immaterial, for if the canon referred to did even control the contract, there could be no doubt but that it might then be dissolved by either party *with the concurrence of the ecclesiastical authority*.

The committee, accordingly, presented to the vestry the alternative of dissolving the contract themselves, or of obtaining the ecclesiastical concurrence for that purpose, by proceeding under the thirty-second canon, the latter of which, as the least offensive, and giving Mr. Jones the fairest chance, they recommended, and the vestry agreed to accordingly. So far, therefore, are these acts of the vestry from affording the slightest evidence of the points which it was supposed, on the other side, they incontestibly did, that we could not on our part wish for higher evidence of the regularity and correctness of the proceedings which have taken place against Mr. Jones.

Independent of the evidence which I have been considering relative to Mr. Jones's call, a strong argument is to be drawn from the intrinsic nature of his situation, that it was not for life. It is entirely different from that of a rector, whose usefulness and independence may require that the tenure of his office should be for life, subject to such regulations as the proper ecclesiastical authority may see fit to impose. But the assistant rector, and Mr. Jones, as I shall presently show, was not even that, is employed for the express purpose of giving aid and relief to the rector in performing the duties of the parish. He is therefore inferior and subordinate to the rector, to whom he is intended to be but a mere auxiliary. Would there not, therefore, be an impropriety in putting them upon the same footing as to the stability of their respective offices? Suppose the rector and assistant should disagree, who is to give way? The assistant may be guilty of no moral offence, and yet be useless to the rector as an assistant. As he is chosen then by the vestry, with the neces-

sary concurrence of the rector, to co-operate with him, there seems to be a propriety in keeping him dependent upon them as the best means of securing to themselves the benefit of the services he was expected to render, so that when he did not answer this purpose they should be at liberty to dismiss him and choose another.

Again, the employment of assistant ministers has been rendered necessary from the increase of the congregation of Trinity Church, by the addition of her chapels, and the consequent increase of parish duty. Now, suppose, as has already been done with one, the other chapels should also be separated from Trinity Church, and made independent churches, it is very evident that Trinity Church, would not then require a rector, assistant rector, and three assistant ministers; which shows that their call could never have been for life, but was to depend upon the necessity or convenience of their employment.

I am aware that these observations may be met by showing that according to the charter of Trinity Church, the assistant rector, like the rector himself, holds his office during life, and that if this had been in itself improper, it would probably not have been introduced into it. But connected with this fact, it should also be recollected, that the rector of Trinity Church, under its original charter, was the *bishop of London*, and as it was not presumed that he would come hither to discharge his parochial duties, and as the assistant rector could of course never interfere or differ with his principal in the performance of their several duties, his office might well be put on a more permanent tenure than if both were resident here. And yet even the assistant under the charter may for "cause, reasonably proved, be displaced by the rector for the time being, by and with the consent of the said vestrymen, or any eleven of them."*

Let us now, however, suppose that Mr. Jones did hold his office of assistant minister for life; I shall still show that he is subject to the application of this canon.

* See page 22.

Every office that is held for life, has annexed to it, as a necessary intrinsic condition, that it is to depend upon good behaviour. Hence an office for life, or *quam diu bene gesserit* are used to express the same thing. Whoever, therefore, enters upon such an office undertakes to perform its duties with becoming fidelity and abilities. He moreover engages to conform himself to the directions and regulations of those who have the right to prescribe to him rules for his conduct. These implied obligations, on his part, have all the force of the most positive stipulations: they are the conditions upon which he is to hold his office for life, and if he fails in their performance he cannot complain at being deprived of it.

Let us apply these principles to the case of Mr. Jones. When he became an assistant minister of Trinity Church, if the contract, on their part, was that he should hold the situation for life, or during good behaviour, and should be paid accordingly, the corresponding part of the contract on his was, that he should perform the duties of his sacred office in an acceptable and useful manner to his congregation; that he should submit to the canons which from time to time should be made by the competent ecclesiastical authority for the discipline of the church; that he should so demean himself as not to fall under the displeasure of his congregation, and thereby create differences and controversies between them, and that he should not, by a disobedient and refractory temper refuse submission to the judgment of those who, according to the government of the church, are entrusted to enforce its laws. Now, has not Mr. Jones broken the contract in all its essential points? by a restless and turbulent disposition, excited by envy, he not only destroyed his own usefulness, but he was busy in the destruction of that of others with whom he was associated. He was no longer able to discharge the duties for which he was called, for many had grown so dissatisfied with his conduct that they would not set under his ministry, and by a course of rebellious disobedience of the canons and authority of the church has disqualified himself from performing his clerical functions either in Trinity Church or elsewhere. With what face, then, can Mr. Jones talk of his

contract for life, when he has unfitted himself for the performance of it on his part? when he has by his own acts divested himself of the capacity to discharge a single duty that appertained to his station.

To exempt Mr. Jones from the application of this canon would be to push the doctrine of inviolability of office and contracts to a most dangerous extreme: one that receives no countenance in the system of our civil jurisprudence, and I trust will never form a part of the church government of any religious denomination in our country. What! is a clergyman, because he is called for life, to be above all law; all control, all coercion of his church? Is his contract of so unalterable a nature, that when once made there can be no superior power that has the right to intermeddle with it? This can be the case no where, but especially it is not in the church of which Mr. Jones was once an officiating minister.

When he first took the sacred orders of a priest, he made a solemn vow, which ought alone to silence every argument that has been urged for him on this topic. Among the questions which are propounded by the bishop on that occasion to the candidate, for his assent, is the following.*

The bishop. Will you reverently obey your bishop and other chief ministers, who, according to the canons of the church, may have the charge and government over you: following with a glad mind and will, their godly admonitions and submitting yourself to their godly judgments?

Answer. I will so do, the Lord being my helper."

Here then, is a contract which was antecedent to every other that Mr. Jones could have made in his clerical character, and from its nature must be paramount to every other: he could make none inconsistent with it.

According to this he is forever *reverently to obey his bishop and other chief ministers according to the canons of the church.* Whatever engagements Mr. Jones afterwards entered into were of necessity subservient to this: by this they were regulated and controlled, and if in collision with it, would be void.

* See page 20.

Again, in the very letter of institution which was given to Mr. Jones, by the bishop when he was instituted into Trinity Church, he is invested with his office upon this express condition:*

"You continuing in communion with us, and complying with the rubrics and canons of the church, and with such lawful directions as you shall at any time receive from us."

"And in case of any difference between you and your congregation as to a separation, and dissolution of all sacerdotal connexion between you and them, we, your bishop, with the advice of our presbyters, are to be the ultimate arbiter and judge."

If therefore, the contract between the vestry and Mr. Jones was for life, it was subject to his engagement when he became a priest, and depended upon his complying with the rubrics and canons of the church, and in case of any difference between him and the vestry respecting a separation, of submitting himself to the judgment of the bishop and his presbyters.

But independent of these last considerations, why are not calls for life subject to the control and government of the convention? And why may they not prescribe modes to put an end to them, whenever the peace and happiness of the church require it? Our statute books are full of laws, prescribing modes by which contracts may be dissolved. The whole system of bankrupt and insolvent laws must otherwise be blotted out of our system of jurisprudence. The contract of marriage itself, which is not only for life, but involving all its best and tenderest interests, has not been thought exempt from legislative regulation, and its dissolution is accordingly provided for in certain cases, where it was formed, as well before as after the passing of the act. So in like manner the convention are the ecclesiastical legislature, and have the same right to legislate over ecclesiastical contracts, that the state legislature has over the civil contracts of its citizens. It is no objection, therefore, to the canon under which Mr. Jones has been proceeded against,

* See page 19.

that it was passed after he was settled in Trinity Church, for the convention had full power to pass it, and Mr. Jones was bound to yield to it his obedience.

The last objection to the applicability of this canon to Mr. Jones's case, is, that it interferes with the usages and charter of Trinity Church. The words of the canon, upon this point, are, that it "shall not be obligatory upon the church in those states or dioceses, with whose usages, laws, or charters it interferes." This exception, according to my construction of it, does not apply to the usages, laws, or charter of any one separate or individual church, but to the whole church, in its collective capacity, of a state or diocese. The expression would otherwise have been, "shall not be obligatory upon *any church*," &c. or upon the *churches*, &c. This would have shown that the word *church* was used as equivalent to *congregation*; but whenever the words *the church* are used in the manner they are here, the whole body of the church within a state or diocese is meant, and consequently, the laws, usages, and charters, referred to in the canon, are such as are common, and which is actually the case in some of the states, to all *the church*, that is, to every episcopal congregation, in any particular state or diocese, and not to any one church or congregation singly. In confirmation too of this construction, it should be remembered that the general convention legislate over dioceses by passing canons applicable to them all, leaving to the state conventions to legislate over their individual churches.

I will now cite some instances to show the invariable use of the words *the church*, *church* or *churches*, to be as I have just stated.

In the first article of the constitution of the episcopal church in the United States, will be found an example of the first kind, "*the church* in each state shall be entitled to a representation of both the clergy and laity." So in the sixth article of the same constitution: "In every state, the mode of trying clergymen shall be instituted by the convention of *the church* therein." In like manner, we find it in the fifth canon of the general convention: "If, during the recess of the general convention, *the church* in any state or

diocese, should be desirous of the consecration of a bishop," &c. Again, in the thirteenth canon of the general convention, "No person shall be ordained priest, &c. unless the standing committee of *the church*, in the state for which he is ordained, shall certify to the bishop," &c. Other instances might be adduced, of a similar use of these words; but those I have mentioned, are sufficient to show that *the church* is an expression used in contradistinction to any one particular church or congregation, and is a sort of collective or representative description of the whole.

I shall now refer to an instance in which it became necessary to speak of the church in the sense I have just mentioned, and also of the individual churches, which serves to mark most clearly the soundness of the distinction I have made. It is in the twentieth canon of the general convention. "Every bishop, in *this church*, shall visit the *churches* within his diocese or district, for the purpose of examining *his church*," &c. And such visitations are to be made "once in three years at least, by every bishop to *every church* within his diocese or district," which shall make provision for the expences thereof. "And it is hereby declared to be the duty of the minister and vestry of *every church or congregation*, to make such provision accordingly." Again, "The bishop of any diocese, state, or district, may, on the invitation of the convention, or standing committee of *the church*, in any state or diocese, where there is not a bishop, visit and perform the episcopal offices in that state, or part of the state, as the case may be."

Now, Trinity Church is not *the church* in this state or diocese: it is *a church*, or one of the *churches or congregations of the church*; and therefore, if the canon did interfere with the usages or charter of Trinity Church, it would not on account of the exception we have been considering, be liable to any objection. Another question might, it is true, in that case arise, how far the ecclesiastical authority could establish a different rule from the civil authority of the state, in relation to clerical affairs, or the regulation and control over their own ministers. It will not be necessary, however, here to discuss that abstract question, because I propose now

to show that the canon does not interfere with the usage or charter even of Trinity Church.

As to usages, I know of none which have been proved, with which any interference can be pretended, unless, indeed, it should be supposed, on the other side, that they have shown, that it is the usage of Trinity Church to call her assistant ministers for life, and that when they are once called, they are to be continued whether they behave well or ill, and are to be entirely exempt from the regulation and government to which the ministers of all the other churches are subject. Trinity Church, herself, disavows such an usage in all its parts: in addition to which, I believe I have already shown, that it has no existence except in the brain of him who idly seeks for shelter under its protection.

Mr. Jones, to entitle himself to any privilege under the *charter* of Trinity Church, must show that he is the assistant rector, or assistant preacher, as he is called by that instrument, for there is no mention in it of assistant ministers: they grew out of the subsequent necessities of this church, as has been already explained. Mr. Jones, however, can have no claim to this station, for it not only was not the one to which he was appointed, but if assistant preacher and assistant minister should even be thought to be the same thing, yet, as there can be but one under the charter, and as both Dr. Beach and Dr. Hobart were assistant ministers before Mr. Jones, I do not very well see on what grounds it is that he is to overreach their appointments, and take precedence of them: though to be sure, claims, quite as extravagant, have been made by this gentleman, and with precisely as much propriety and justice. But the assistant rector or preacher, under the charter, and an assistant minister, are not the same, because, if they were, then Dr. Beach, who was the oldest assistant minister, must have been the officer mentioned in the charter as assistant preacher. Now, this was evidently not the case, as Dr. Beach was only appointed to that situation, after the same afflicting dispensation of Providence had rendered bishop Moore, who was also rector of Trinity Church, unable to discharge its duties. And yet, so strong has been the disposition in this cause to make every

thing contribute to Mr. Jones's wrongs, that the opening counsel actually adverted to this appointment, as one that was made for the express purpose of having a bearing on this case; and added it to the list of his grievances. Thus an appointment, produced by the visitation of heaven itself, and made on the *13th of March*, 1811, was made for the purpose of injuring Mr. Jones in the present controversy, which was not then begun, for it dates its origin from the publication of the "*Solemn Appeal*," which was not published till the beginning of *May, following*.

I have now, I believe, gone through all the objections which are directly involved in the question of jurisdiction, and unless I have greatly deceived myself, I have shown that the bishop and his presbyters had complete cognizance of this case. There are, however, some others that remain to be noticed, which, though they cannot strictly be classed with those which regard the question of jurisdiction, may yet be considered as in some degree partaking of the same character. They relate to the qualifications of the bishop and his presbyters to sit as judges in this business.

And first, it is said, that bishop Moore was rector of Trinity Church, and as such formed a part of the vestry: that he was, therefore, a party to the proceedings which were instituted against Mr. Jones by the vestry, and thereby became disqualified to sit as a judge in the case. This objection did not occur to Mr. Jones himself, at least it is not incorporated in the protest he delivered to the convocation; nor do I believe that he meant to include the bishop among those whom he then called "*parties concerned*."* He shall, however, still have the benefit of it. In point of fact then bishop Moore, though he was rector, never attended the vestry after the appointment of Dr. Beach as his assistant. He it was who constantly presided at every meeting of the vestry at which the proceedings, in relation to Mr. Jones, were had. Bishop Moore, therefore, took no part, whatever, in them: he did not concur in them, for he was not present when they took place, nor did he advise or direct them. It is not true,

* See pages 56 and 57 of *Syst. of Intl.*

therefore, that he was a party to the acts of the vestry, unless by a mere legal fiction he is to be considered so, from the circumstance of his being rector. But the fictions of law are only used in furtherance of justice, not for its destruction. If, however, he had even acted as rector, it could not have disabled him from sitting in the convocation as bishop, because he was but the presiding officer; he was bound by the judgment of his presbyters, and his only duty was to ascertain that, and carry it into effect. There is another and a stronger reason why he was bound to preside at that meeting, which was its absolute and indispensable necessity; and that makes many acts lawful which would otherwise not be so. The convocation could not have proceeded to business without the bishop: no one else could supply his place. If he therefore, could not preside, the consequence would be that the canon in question could never be applied to any of the assistant ministers of Trinity church; not for any of the reasons already examined, but because the bishop happened also to be rector of that church. Nay, if the vestry should present one of their assistant ministers, he could never be brought to trial for the same reason; for the presentment must be made to the bishop, and the bishop is rector. Thus might these ministers forever offend with impunity whilst the characters of bishop and rector of Trinity Church were united in the same person. When consequences, fraught with such mischief, are the direct and necessary result of the doctrine just noticed, they afford the highest proof of its unsoundness.

Another objection of the kind last referred to, is, that all the presbyters of the diocese were not summoned to the convocation. Will the gentlemen condescend to point to the canon or practice of the church which requires that all the presbyters of the church should have been summoned? Can it be pretended that the proceeding against Mr. Jones was of graver or higher import than the *presentment* of a clergyman which may end in his degradation, whereas this could only end, as far as depended upon the convocation, in the separation of Mr. Jones from Trinity Church? And yet in the case of a presentment *all* the presbyters are not summoned. On the contrary only *eight* are nominat-

ed by the bishop, out of whom the person accused may choose *five*, or if he neglect or refuse to do this, the bishop shall appoint the five. See 2d canon of the episcopal church of this state, passed in 1802.

Thus, five presbyters are a sufficient tribunal for the trial of a clergyman in cases of the highest offences, and yet Mr. Jones demands that the whole diocese should be put in requisition merely to settle the terms upon which he should leave one congregation, and be at liberty to go to another. I am really at a loss to conceive on what ground he can suppose himself entitled to this great attention, unless, indeed, he thinks, as I fear he does, that his salary in Trinity Church is of more importance than the livings, nay, than the character and honour, of all the other clergymen in the diocese.

Extravagant however as Mr. Jones's pretensions, on this subject are, I shall now shew that enough was done to satisfy any man, who did not mean to find fault with whatever was done. Every presbyter in the diocese, who was entitled to a seat in the convention, was actually summoned by the express directions of the bishop. To this point Mr. Lyell's testimony is explicit.* He says, "that he received directions from bishop Moore to summon *all the presbyters in the diocese, who were entitled to seats in the convention*, to attend him on the 5th November 1811, at No. 20 Robinson-street, to take into consideration the affairs of the plaintiff and the vestry of Trinity Church: he prepared the notices accordingly, and took them to bishop Moore, who directed his son Clement C. Moore to sign them for him, which he did, and handed them to the deponent, who afterwards put them in the post office."

Now, as the number of presbyters that the bishop was to convoke under the canon, is no where prescribed, and as they are to act as a kind of advisory council to him, it would seem to follow, that their number was left to his discretion. If, therefore, the bishop, adopting by way of analogy, the rule prescribed in the case of presentment, had summoned eight presbyters of his own selection, giving Mr. Jones the right of objecting to these if he pleased, such a tribunal would have been canonically instituted. Instead of doing

* See page 232.

this, however, the whole diocese is opened to him, and then in the true spirit of factious murmuring, the complaint really is that too much has been done. When the same clerical persons who would have been convened to deliberate and decide on the most important affairs of the church, are convoked to determine Mr. Jones's case, he objects that they are not *his peers*. Although they have a voice in all the concerns of the church, yet they are not qualified to decide on his individual concerns. By what name can this be called, but perverseness of the worst kind, arrogance the most insufferable?

If a different course had been taken, and the few presbyters had been summoned that were not entitled to a seat in the convention, and who on that account had not been summoned, the tone of Mr. Jones's complaints would have been altered, and we should have been told of the monstrous injustice of enabling persons to decide on so interesting a question to him as that of depriving him of his living, who would not have been consulted, and could not have voted on the most trifling question which related to the affairs of the diocese. And yet because the safest, the most prudent, and unexceptionable rule is adopted, that of submitting Mr. Jones's case to precisely the same presbyters that were entitled to deliberate on and direct all the other affairs of the church, without any discrimination or selection, the charge of partiality and injustice is as clamorously maintained as if he had really been deprived of the common rights and privileges belonging to one in his situation, instead of receiving favours to which he was not entitled.

It is made a farther objection to the convocation that some of the members were parties, and that some had expressed opinions on the matter submitted to them.

It might be a sufficient answer both to this and the last objection, to say that the right of deciding on the qualifications of the presbyters whom the bishop had assembled, belonged to him or at most to the convocation itself as judges of its own members, and that as they disregarded both, their judgment is final. Without relying on this, however, I shall show that there is as little in this objection as there was in the last. So

far as it relates to parties, it is entirely without foundation. I have already shewn this to be the case in regard to the bishop, if the objection is intended to include him; and with respect to the presbyters, there is not even plausible ground for it. The parties, and the only parties, were the vestry of Trinity Church and Mr. Jones; and to attempt to introduce any other, is to revive the old pretence that there was no controversy between them, which having already disposed of I shall not now renew its consideration.

But some of the members had expressed their opinions on the question. How far is this meant to extend? for if there were some who had formed impressions, or even opinions unfavourable to Mr. Jones, there were others who had been his uniform and zealous supporters, and who never thought themselves, and were never thought by Mr. Jones, unqualified, on that account, to act as his judges. Their opinions were known; but it was not to them that Mr. Jones objected. Strong as was his desire for an *impartial* trial, he would not have desired his friends to withdraw from the convocation, if their presence and their votes could have been of any avail. But where is the evidence that the other presbyters had given any opinion in the case? I shall be told, probably, of the convocation in October, and that this matter was there discussed. Admitting this to be so, what proof does it afford that those who were then present were thereby incapacitated from again acting? Some few presbyters certainly did meet the bishop on this subject in October, who, undoubtedly, at that time thought that Mr. Jones would be governed by the advice which they might give him, and especially as Dr. Beach was present at that meeting, and concurred in what was done. This was a proper and prudent step, previous to proceeding to extremes. It was soon, however, discovered that Mr. Jones was determined to put the discipline of the church to the test, and that there was nothing left but to pursue a strict and regular course of measures with regard to him. A formal convocation, therefore, not of the few who happened to have met together, as just mentioned, but of every presbyter within the diocese who was a member of the convention, was summoned, of which due notice was given

to Mr. Jones. But if the great body of these presbyters entertained sentiments unfriendly to Mr. Jones, the fair inference is, that it was owing to his own improper behaviour. Could he then have asked for a fitter opportunity to vindicate his character than was thus afforded him? An injured man, conscious of his innocence, would gladly have availed himself of such an occasion to enter into a full and candid explanation to his brethren, of every thing that could either have justified or extenuated his conduct. Instead of this, however, he shrinks from every thing like an investigation, and puts his whole defence upon his *protest*. He had lately discovered that bishop Moore, whom even in his "*Solemn Appeal*," he calls his *beloved diocesan*,* had no right to exercise a single episcopal function, without the concurrence of bishop Provoost, under whose protection he now hoped to escape from an enquiry which he could not otherwise avoid and which he dared not meet. Have we not the right to conclude that he had no other defence to offer than the one he did? does it not amount to an admission, that if the points on which he relied in his protest are untenable, that he is left self-convicted? That they are so, I hope I have sufficiently established.

I propose now to show that if the bishop and his presbyters had jurisdiction of this case, their decision is conclusive.

On this point I shall be very brief. It is a well settled principle of law, that the decisions of a competent tribunal are conclusive on the matter decided, and are to be respected accordingly by all other tribunals. In England the proceedings and sentences of the ecclesiastical courts, in all matters, in which they have jurisdiction, are binding upon the common law courts, even where the proceeding, though conformable to the canon law, is *against the reason of the common law*.†

If then the sentence of the bishop and his presbyters, having established their jurisdiction as I have done, would be

* See page 73. *Solemn Appeal*.

† 2 *Bac. Ab.* Title *Ecc. Courts*, letter *E.* and cases there cited.

conclusive in a court of law, it is equally so here, because nothing is submitted but what "could probably be discussed in a court of justice in any suit or action"* between the parties to this arbitration.

A class of cases in England, analogous to the present, are those of visitors of corporations, whose decisions are not only conclusive, wherever they have jurisdiction, but a court of law cannot even enquire into the truth of the facts on which it is grounded.†

Upon what principle, then, can the sentence of the convocation be impeached? It is the judgment of a tribunal possessing full jurisdiction of the case, and we are entitled to all the benefit arising from the conclusiveness of its nature, that we could have been if we were discussing this case in a regular suit before your honours as judges, instead of arbitrators.

I come now to the last question in this cause: whether the compensation allowed by the bishop and presbyters to Mr. Jones ought to be altered?

This question, it will be recollected, can only arise upon the court's establishing the validity of the proceedings against Mr. Jones, in which case, it is part of the terms of the submission,‡ that the compensation which ought to be paid to him, shall, notwithstanding, be considered as open for adjustment and settlement by your award. The vestry of Trinity Church do not, however, mean by this to admit that the sum fixed on by the convocation should be varied. They do not ask for a diminution of that sum, but they are most strenuously opposed to its increase, not on account of the mere difference of money which they might be obliged to pay Mr. Jones, but because it could not be done without prostrating the whole plan of church discipline. It is true that in the great controversy between the vestry and Mr. Jones, respecting the dissolution of the connection between them, their triumph over Mr. Jones would be complete by obtaining your confir-

* See the articles of submission, page 14.

† *Philips v. Bury*. 2 Tem. Rep. 346.

‡ See the submission, page 14.

mation of the proceedings that have taken place; still, should this be accompanied by any additional pecuniary allowance to him, I must confess, that in my mind, the proud feelings in which I should otherwise indulge, at so just a victory, would be greatly allayed. Whilst I rejoiced at the defeat of this rebellious contemner of the authority of his church, I should mourn over the deep and deadly wounds inflicted on its government. I do beseech this court, then, to pause long, to consider well, and weigh deliberately all the consequences that are likely to flow from their confirming the proceedings against Mr. Jones with one hand, and remunerating him for his disobedience of them with the other. It would be to frown upon the offence, and smile on the offender: to punish the crime and reward the culprit.

In considering this part of the cause I am naturally led into a view of the nature of Mr. Jones's offence, and the circumstances under which it was first committed, and has since been persevered in; and if it shall appear to have originated in personal envy and jealousy, and to have been directed against the peace, the order and the happiness of the church of which he was a minister, I am persuaded that he will appeal in vain to this court for a compensation for such labours.

Mr. Jones's publication of his "*Solemn Appeal*" was not a hasty act. It was not made in one of those fits of passion which sometimes betray even a generous mind into error. He was not allured from the high path of honour and duty by any sudden temptation that fastened itself upon him in a weak and unguarded moment, and made him its unwilling victim. To such excuses or palliations of his conduct he does not, he cannot pretend. The dark design had long been concealed in his bosom. For years had he been brooding over his imaginary wrongs, and least memory should be unfaithful to her trust, and malignity loose by the softening hand of time, something of its venom, written records were made of particular occurrences, whilst the feelings of the moment were most likely to imprint on them a false character, and they are preserved and resorted to, to cherish and reanimate the enmity which had given them birth.

After Mr. Jones had prepared his pamphlet for the press, the manuscript was circulated by him among certain persons with whom he probably thought it would be most likely to have its desired effect; but several even of them disapproved of its publication. As soon, however, as he had, by a sufficient secret circulation, paved the way for its appearance before the public, he determined, against the advice, and even entreaty of some of his best friends, to do an act fraught with more mischief than a whole life of penitence could atone for. When, on one occasion in particular, he was cautioned against this act, as one that would be alike injurious to the church and himself, his reply was, *I have weighed well the consequences, and am ready to meet them.* He had time then to reflect, to consult, to deliberate. He did so, and rejecting at once the sober dictates of his own judgment, the admonitions of conscience, and the warning voice of his friends, he sought only the gratification of his vindictive passions.

What was the natural tendency of this publication? Under the pretence of a "*Solemn Appeal to the church*," it was an attack upon its peace, prosperity and unity which was well calculated to prostrate the whole in the dust. That Zion which he found in tranquillity, he attempted to convert into disorder and schism. The seeds of discord were sown where once grew nought but the christian virtues. Strifes and dissensions, and all the angry passions connected with them, were ripening into active life and motion. They were entering into the retirement of domestic life, and tearing asunder the dearest ties of human happiness. Children were arraying themselves against their parents, and even husbands and wives were becoming opposing partizans. Thus was not only the peace and welfare of the church assailed, her discipline defied and contemned, but all the tender charities of life were rudely intruded upon by this inflammatory publication. He whose business it was to teach peace on earth and good will to mankind, was now employed in creating dissensions in his congregation, defaming his associate ministers, destroying their usefulness, and bringing a stain upon religion itself by the animosities he was thus engendering among its professors. Under these circumstances the vestry, with

a firmness as honorable to themselves, as it has been useful to the church, determined to stop the farther spread of these evils, by removing from among them, him who was their cause. No sooner was this effected than the storm which prejudice and misrepresentation had raised, and which began to threaten destruction to the best hopes of the sincere christian was dispelled, and the sunshine of order, affection and harmony again smiles upon our altars.

If Mr. Jones has not, therefore, ruined the church, brought disgrace on its ministers, and made religion a scoff, it is not because he has not tried a bold experiment for the purpose: but happily because it failed. And now, when these mighty mischiefs have been averted, when the evils which he was striving to heap on others, recoil on himself, we are told that a family, whom I believe to be both innocent and interesting, are to partake in the calamitous consequences that await his misdeeds. You are, therefore, required to reward him in proportion as the desolating ruin he meditated against others, has been prevented, and has fallen upon himself, and those most closely connected with him. Yes, already has the voice of impassioned eloquence described to you the miseries to which this man's unfortunate family will be reduced, if you do not restore him to a situation he has disgraced, or at least increase the compensation that has been allowed him; and I doubt not the appeal will be reiterated in tones calculated to wring from your hearts a bounty which your understandings must refuse. If want and suffering are to be the portion of those whom it was his duty to guard from both, as far at least as depended upon himself, upon whom ought the blame to fall? If a sense of duty could not restrain him from the rash and wicked course he had determined to pursue, ought not the feelings of a husband and a father to have forbid it? But, alas, nothing could have this effect. He had resolved upon the act, *and had weighed all its consequences*. Be them then upon his head: and if others, whose destinies are inseparably connected with his own, are made his fellow victims, however we may lament their fate, we should not cease to condemn him who is its cause.

Was there any necessity for the publication in question? The defenders of Mr. Jones, who assembled at a *tavern* to regulate the affairs of *the church*, many of whom, I fear, were more at home there than in the temples of their maker, tell us that the vindication of his own character and the good of the church justified his "*Appeal*." Whether the fumes of the place in which they met, had, by the time they got to this part of their resolutions, made them doubt the prudence of assigning their reasons for this opinion, as they had most lavishly done before for others, I know not: perhaps after the example of a certain kind of knights, who think "discretion is the better part of valour," they thought silence the better part of wisdom. If so, it is a pity the idea had not occurred when they were so profoundly employed in discussing the *illegality* of the proceedings of the convocation, as I presume but very few of them were capable of forming an opinion on that point, and to those who were, a little more reflection and examination would probably not have been amiss. Be this, however, as it may, how Mr. Jones's character was to be vindicated by the public slanders of others, or how the good of the church was to be promoted by schism, and all the other evils I have adverted to, can, I believe, only be imagined by Mr. Jones's *tavern associates*.

If Mr. Jones had any serious complaints against his associate ministers, the public was not the tribunal before whom they were to be made. The church has provided ample means for the redress of every wrong which Mr. Jones was pleased to fancy himself suffering under. If then, they existed, why were not measures taken to bring them before those to whom their cognizance belonged? Why did he not ask the friendly interposition of the vestry, or that of the bishop, for the purpose of bringing about, in the very first instance, an accommodation of the matters in which he felt himself aggrieved? Or, if he thought the conduct of which he complained, too injurious to him to deserve treatment so gentle, why did he not make a regular presentment of Dr. Hobart to the bishop? According to the canon on this sub-

ject,* a clergyman may be presented for any *misbehaviour*; a term, broad enough, surely to cover the charges which Mr. Jones has preferred against Dr. Hobart; and least it should be supposed, as it seems to have been intimated, that the sentence, upon conviction in such a case, is necessarily *degradation*, and that Mr. Jones, in the spirit of forbearance and clemency, would not resort to this mode of proceeding, on account of the severity of the punishment, I beg leave to refer to the canon† which prescribes the sentence, and according to which it may be “*admonition, suspension, or degradation from the ministry, or excommunication.*”

But we have been told that Mr. Jones could not, alone, have made a presentment. This is true, because the wisdom of the church has not left so important a proceeding in the power of a single individual, least it might be made the instrument of personal malice or vengeance. A presentment can, therefore, only be made “by the convention, by the vestry of the parish to which a clergyman belongs, or by three or more presbyters of the church.”‡ Did Mr. Jones ever apply to the convention, or to the vestry, to assist him in presenting Dr. Hobart? Was his publication necessary for that purpose? But, supposing that neither the convention nor the vestry would have interfered, even if they had been asked, could not Mr. Jones, in the whole diocese, find *two* clergymen to join with him in a presentment? The opening counsel told us frankly that he could not: that the experiment had been faithfully made, and that *Dr. Richard C. Moore* alone could be found possessed of sufficient independence to encounter the displeasure of Trinity Church. He, and he only volunteered his aid, and for this act of disinterested virtue, as my learned friend called it, he received from him a highly wrought panegyric; and yet in a

* 1 Canon of the Episcopal Church of this state, passed in 1802.

† 3d Canon of the Episcopal Church of this state, passed in 1802.

‡ 1 Canon of 1802.

subsequent part of his argument, he thought fit to represent this very gentleman as having since fallen from his high estate, and sunk all his manly independence, by becoming a *pensioner*, and feeding on the bounty of the very vestry of whose injustice to Mr. Jones, he had before been so sensible.

If then, but a single clergyman could be found to associate himself with Mr. Jones in a presentment, does it not of itself afford the highest evidence that he himself was the aggressor; and that, instead of appearing in the character of an accuser, he might be thankful that he was not himself accused?

The publication then stands stripped of every justifiable motive, for if he was injured, the government of his church had provided him the means of redress, to which alone he ought to have resorted. But this was not Mr. Jones's object: he well knew that, by a regular course of proceeding, nothing could be effected to the disadvantage of Dr. Hobart, and, therefore, his ruin was to be accomplished by other measures. The period for electing an assistant bishop was approaching, and the mean jealousy of Mr. Jones could not brook the elevation of Dr. Hobart to that station. " 'This young man,' " said he, " is aiming at the top of the ladder, and we must do what we can to pull him down." In connection with this, Mr. Feltus, one of Mr. Jones's bosom friends, threatens,† that if Dr. Hobart did not withdraw all pretensions to this office, he would be overwhelmed with a " black list of criminal charges," which were already in the press, and would be published, if he did not " shrink from the contest." Here it is that Dr. Hobart's crime stands confessed: " the very head and front of his offending hath this extent, no more," *that he dared to allow his friends to think of promoting him to the episcopacy.* Attempt not to mount that ladder; disclaim the mark of honour and respect which is about to be conferred upon you, and the "*Solemn Appeal*" will never appear; but if you cast one look towards the elevation that only waits

* See Mr. Swords's testimony, p. 219.

† See letter to vestry, p. 94.

for your consent, the instrument of your ruin is made ready, and will burst upon you when you are unprepared for the shock, and when your ruin will be certain. Can these be the sentiments of christian ministers? Can they be governed by such motives? Alas, the answer is before us; they have given it themselves.

But, it is insisted, that as Mr. Jones thought Dr. Hobart utterly unqualified for the office of assistant bishop, it was a conscientious duty to disclose his opinion to those who were to decide on this question. Allowing this to be so, still it would not prove the necessity of writing, much less of publishing a book. But, if conscience required him to guard the convention against an improper choice, it would equally impose upon him the necessity of believing in the fitness of the candidate whom he himself proposed. I want no better test of Mr. Jones's sincerity than this; for if I can show, that on this point he is not only inconsistent with himself, but is involved in direct falsehood and hypocrisy, and I am aware of the strength of the words which I use, then I think that even those who have hitherto given credit to the honesty of his intentions, will at least pause and reflect.

In his "*Solemn Appeal*,"* he very explicitly tells us who he thinks ought to be chosen assistant bishop. "The first person," says he, "who naturally and immediately presented himself, for the appointment, to the mind of every dispassionate member of the church, was Dr. Beach. It was his right, from his years, from his standing in the church, from his respectability of character. Had matters been left to take their natural course, not a dissenting voice would have been heard." Now, if Mr. Jones really thought that Dr. Beach had these pre-eminent claims to this office, in short, that it was his *right*, and that *every dispassionate member* of the church thought so, and looked to him as the *first* person entitled to the appointment, how can he reconcile this opinion with his making a visit to Mr. Wilkins, to induce him to become a candidate for this very office? How could he entertain a wish that Mr. Wilkins should interfere with

* See page 70.

the very man, against whom there ought not to have been a *dissenting voice*? And, yet Mr. Jones did this: nay more, when he found that Mr. Wilkins would not listen to his proposition, he vented his spleen against Dr. Hobart, and insidiously attempted to enlist Mr. Wilkins's pride and resentment, by telling him that it was Dr. Hobart who prevented his getting St. John's Church.* It would require some ingenuity to make this conduct comport with Mr. Jones's declaration in favour of Dr. Beach. But, I do not stop here. Mr. Prentice† informs us, that in the summer or autumn of 1808, Mr. Jones paid him a visit, and that during some of the conversations which then took place between them, Mr. Jones said, that "if bishop Moore should drop off within a few years, Dr. Beach would undoubtedly, or probably, come forward with his claims to become bishop, but that he was wholly unfit for the office, and ought not to be elected; and Mr. Jones added observations very disrespectful to Dr. Beach, at the same time or times." Among the disrespectful observations that were so used, and which Mr. Prentice afterwards mentioned on the examination of Mr. Jones's counsel, were Dr. Beach's "disposition to indolence, that he would be led by the nose by Dr. Hobart and Mr. Lyell, and that his want of talent in writing was not suited for a bishop." Thus, about two years and a half before the publication of Mr. Jones's "Appeal," he thought Dr. Beach *wholly unfit* for the episcopal office, one who *ought not to be elected*; who had neither industry nor talents, and was besides, mean enough to yield himself, with the most servile submission, to the government of others. Why, in the mean time, he had altered his opinion, Mr. Jones has not seen fit to disclose, nor is it easy to conjecture, unless, indeed, he imagined, that in case of Dr. Beach's promotion, he should succeed to the honourable employment he had assigned to Dr. Hobart and Mr. Lyell. When I speak of Dr. Beach in this controversy, the personal respect I feel for him makes me do it with an aching heart, for, in my soul, I do believe that he has been cruelly abused and deceived by

* See Mr. Wilkins's evidence, p. 239.

† See his evidence, p. 227.

the busy influence of false friends, or he would never have taken the part in it he has done: he would never have discarded from his confidence and affections, him, who had grown up in both, and who highly deserved them, for one who would elevate him to a mitre, or crush him with disgrace, as best suited his own malignant designs.

I beseech you to ponder on the conduct of Mr. Jones, which I have just developed, to compare his application to Mr. Wilkins, and more especially his conversation with Mr. Prentice, with the sentiments expressed in the "Solemn Appeal," in favour of Dr. Beach, and to say whether I have not made out my charge against him, on this subject, harsh as it might seem to be? I ask whether he stands before you as a man acting from honest motives?

As I think that it must be apparent that Mr. Jones's object was not to write Dr. Beach into favour, but to write Dr. Hobart into disrepute, that he had no wish to make the former bishop, provided the latter was excluded from that office, let us, for a moment, enquire into the causes that had produced this unrelenting opposition to Dr. Hobart, and if I mistake not, they will be traced to some of the worst passions of the human heart.

The very first page of Mr. Jones's "*Appeal*," discovers, that the secret springs of his whole conduct were envy and jealousy of Dr. Hobart. He complains, in terms not to be misunderstood, that the young men who had been studying for the ministry, were more attached to Dr. Hobart than himself, and that measures had been taken by the former to alienate their affections from him; and yet, every one of those alluded to, expressly declare,* that whilst Dr. Hobart's uniform language and behaviour, relative to Mr. Jones, was friendly and respectful, his, on the contrary, was disrespectful and even slanderous towards Dr. Hobart, to such a degree, as to leave them no doubt he was the object of Mr. Jones's envy, and on that account alone, they broke off their intercourse with him. Mr. Clark† testifies, that before

* See *Letter to the Vestry*, p. 6 to 13, and *Mr. Wyatt's evidence*, p. 231.

† See *his evidence*, p. 203.

Mr. Jones had been in New-York a year, he plainly discovered, from his conversation, "that there was a jealousy on his part respecting Dr. Hobart." The conduct of Mr. Jones, in this respect, had, as early as 1808, attracted the notice of the bishop, who told Mr. Harris* "that he was afraid that Mr. Jones was influenced by improper motives, that he was envious of Dr. Hobart, and wished to prevent his rising in the church, but that it would be vain." With this predominating temper, on the part of Mr. Jones, he watches the footsteps of Dr. Hobart, weighs with critical nicety the import of every expression, and finds out offences and injuries where none were meant or thought of.

This controversy, in regard to time, divides itself into three periods. The first from Mr. Jones's settlement here, till the convention in 1808; the second, from that time till the publication of the "Appeal;" and the third, from the publication to the proceedings before the bishop and his presbyters. During the first period, the complaints of Mr. Jones relate to what passed in reference to Gen. Hamilton's funeral, and what occurred at the funeral of Mr. Walton. I will not now stop to oppose Dr. Hobart's statement of both these transactions to Mr. Jones's: it is enough to say, that in all their material circumstances they are unlike. But whatever were their differences on those occasions, Mr. Jones himself admits that they were settled, and that they were reconciled; and "Mr. Hobart,"† says he, "and myself, were on the same friendly footing as before: *only, to be sure, I could not help viewing him with a little distrust.*" Reconciled to his friend, and yet *distrusts* him! Yes, here you have a picture of the man, taken from life, and drawn by himself. While he proffered the hand of restored friendship, and his tongue renewed his friendly professions, jealousy and envy were rankling in his heart, and preying on his very vitals. He was true to himself; he did distrust, he pursued Dr. Hobart with watchful suspicion, and when he pretended to be *on the same friendly footing with him as before*, he was calumniating him

* See his evidence, p. 141.

† Solemn Appeal, p. 9.

before the young students of divinity, he was representing him to Mr. Prentice,* and doubtless to others, as "a hasty, ambitious, and ill-bred man, unworthy of the ministerial office, and undeserving of the confidence of the other clergy of the same connection." When Dr. Hobart, who is incapable of any thing like insincerity or hypocrisy, whose frank and manly nature is marked in every action of his life, and who emphatically carries his heart in his hand, was afterwards apprized, in some measure, of the insincerity and duplicity that Mr. Jones was practising towards him, and reproached him with it, what is his answer? My tongue falters, and my heart dies away, as I repeat the chilling, freezing words. "To this I answered," says he, "that I acted according to my natural constitution." Thus, whilst Dr. Hobart, in the generous sincerity of his soul, had forgotten every thing of an angry nature that had ever passed between them, while he was treating Mr. Jones with unreserved friendship, and was uniformly speaking of him in terms of friendly regard and respect, Mr. Jones was secretly sapping the foundation of a fame, at whose growth his jealous soul sickened: he was smiling in the very face of him at whose heart he was aiming a concealed stiletto, and, when reproached with his baseness and perfidy, coolly answers, *I do but act according to my natural constitution*. From all intercourse with such a constitution, may heaven, in its mercy, for ever defend me!

Until the meeting of the convention in 1803, Dr. Hobart had treated and spoken of Mr. Jones as a friend: this appears from the whole course of the testimony, and yet, as has been already shown, Mr. Jones, though he preserved the appearance of friendship on his part, was pursuing a system of hostility towards Dr. Hobart, that had in view nothing short of his ruin. And, notwithstanding all this, Mr. Jones is pleased to represent himself as the victim of Dr. Hobart's *intolerance*. A short time before the convention of 1808 met, Mr. Jones's views had been unfolded to so many, that they at length were disclosed to Dr. Hobart. And how did he

* See his evidence, p. 227.

receive the intelligence? Did it rouse his anger, did it kindle his resentment, did he determine on vengeance? No: the feelings of injured friendship mingled themselves with the forgiveness of the christian spirit. One of the witnesses,* who had mentioned to Dr. Hobart Mr. Jones's conduct towards him, tells us, that when he received the information, "he appeared to be very much dejected and distressed, and observed, that he could say of himself as the Psalmist had said of himself, "Oh that I had wings like a dove, then I could fly away and be at rest."

Dr. Hobart had for some time been secretary of the state convention, and this office it seems had excited the ambition of Mr. Jones, who was desirous of procuring it for himself, or, at all events, of removing Dr. Hobart from it. As soon as Dr. Hobart heard of this design, he went to Dr. Harris to ascertain its truth, and with the intention, if it was so, of resigning the office in favour of Mr. Jones, as he told Mr. Bulkeley, in the course of the conversation just referred to, he would do. Dr. Harris accordingly testifies,† that just before the meeting of the convention of 1808, Dr. Hobart told him that he understood there was a plan formed to turn him out of the office of secretary, "and that if there was, and he was informed of it, he would resign; to which deponent replied, that he knew nothing of any such plan, but that he would make enquiry; and that he did, in consequence, speak to the plaintiff on the subject, who said that he would vote as he thought proper, but that he had not, and would not speak to any other to influence their vote," which he afterwards communicated to Dr. Hobart. How naturally Dr. Harris went to Mr. Jones to make the promised enquiry, for, if any such plan was in operation, he well knew by whom it was engendered. Is Mr. Jones's answer, however, either ingenuous or true? Whether he did, after that, speak to any others to influence their votes, or not, does not appear; but that *he had done so before*, is proved, for Mr. Prentice says, that in the course of the conversations,

* See the rev. Mr. Bulkeley's evidence, p. 230.

† See his evidence, p. 142.

before mentioned, " Mr. Jones proposed that Dr. Hobart should be removed from, or left out of the office of secretary of the state convention, and requested the deponent, in case he approved of the measure, to prepare the mind of the rev. John Reed, then of Catskill, for it. And this deponent further saith, that he believes the observations before alluded to, made by Mr. Jones, unfriendly to Dr. Hobart's character, were intended, among other things, to induce the deponent to join in the measure of turning or leaving Dr. Hobart out of the said office of secretary." Thus much then we know, that Mr. Jones did, notwithstanding his declaration to the contrary to Dr. Harris, attempt to *influence* one vote at least, and to induce the same gentleman to *influence* another against Dr. Hobart. How much farther Mr. Jones extended his electioneering project, does not appear from the evidence in the cause; but the fair conclusion, from what does appear, is, that he found it impracticable to succeed, and therefore gave it up; contenting himself with showing his own good will towards Dr. Hobart, by voting alone, or with but one other, against him on that occasion.

From this time to the publication of the " Appeal," Mr. Jones continued to manifest his watchful jealousy of Dr. Hobart: he draws him into conversation, and then writes down, from time to time, his own account of what passed between them, in a manner best suited to his own views and state of mind; and we accordingly see advice converted into dictation, and argument into insolence. Notwithstanding the unequivocal evidences of Mr. Jones's unfriendly disposition towards him, which Dr. Hobart possessed in the autumn of 1808, he endeavoured to suppress them, and conceal them, as it were, from himself, for he did not even mention them to a gentleman, with whom he was on the most intimate and confidential terms, till the spring of 1809, when Mr. Berrian says, he told him of some particulars of Mr. Jones's unfriendly conduct, and spoke of it *with regret*. So much did this subject press upon Dr. Hobart's spirits, that Mr. Bulkeley informs us, that in the winter of 1809, he expressed to him a wish to retire, in order to avoid the collisions and difficulties which he foresaw would take place with Mr. Jones.

Dr. Harris also testifies, that “ Dr. Hobart had, in conversations at different times with the deponent, one, not long after the convention of 1810, and the other, he thinks, previous to that time, told the deponent, that it was his wish to retire from the city, on account of the differences which he knew would arise with the plaintiff.” Dr. Bowden, in his testimony, likewise states, “ that he knows, that some time after bishop Hobart had heard of the unfriendly dispositions of the plaintiff towards him, he had it in contemplation to remove to New-Jersey, and the deponent persuaded him from it, and that one of the leading motives to such a step, was the uneasiness in the church, which grew out of the plaintiff’s opposition to him.” Thus you have before you a picture of Dr. Hobart’s ambition, and intolerance. When he is told that Mr. Jones is endeavouring to supplant him in the office of secretary, he immediately informs his friend, that if any such design was entertained, he was ready to resign, and the convention might put him in his place. When he found, however, that nothing would soothe or pacify the discontented temper of this man, he determined to retire from the city, to avoid the evils which his prophetic spirit foresaw; and he was only forced from this resolution, by the entreaties of a valued friend, to whom the church owes many obligations, which this act greatly increased. Had Dr. Hobart been the ambitious, unprincipled, and intolerant character that Mr. Jones has represented him, would he have voluntarily withdrawn from an honour, which the convention had for years conferred upon him, to make way for Mr. Jones himself? Would he, in order to avoid collisions and difficulties with Mr. Jones, have resolved to retire from the city, and even the diocese, and leave him to pursue in triumph his own schemes? Would he, whom Mr. Jones accuses of having for years pursued a system of self-exaltation, have acted thus: nay more, when he had at length within his reach the long wished for object of all his aspiring hopes, when the mitre was about to be placed upon his head, would he have* had a severe conflict in his own mind before he con-

* See Dr. Bowden’s evidence, p. 242.

sented to accept it! Ambition should be made of sterner stuff.

Since the publication of the Appeal, what has been the conduct of bishop Hobart in relation to Mr. Jones? Not a rude, not an angry word has ever escaped his lips. After the unceasing pains with which his most unreserved and confidential communications have been examined into, not a hasty or unguarded expression has been found. He has passed through the fiery ordeal, which was prepared to consume him, unhurt: he has realized the expectations of his friends, and confounded the hopes of his enemies. In all the conversations which he has had with different individuals in relation to Mr. Jones's *Appeal*, he has constantly disclaimed all personal hostility towards him, and treated the attack upon himself as lost and sunk in the offence committed against the peace, honour and discipline of the church;* upon this high and honourable ground he took his stand, and he has never, for an instant, departed from it. When he was applied to, to use his endeavours to stop the proceedings of Trinity Church against Mr. Jones, and is urged to it by the assurance that the measure would be popular, how noble is his reply, how strongly does it mark his sense of duty, and how far does it place him above the mean and selfish passions by which his adversaries represent him to be governed. I know it would be popular, but I want not that popularity which can be gained only by a sacrifice of duty. I have recently come under the most solemn obligations to defend the interests of the church: upon these Mr. Jones has made a serious attack, and I will not interpose between him, and the punishment that ought to await his conduct. So far as respects myself personally, I have naught to say, my own injuries I can, and do forgive, but his offence against the church I have neither the power nor the inclination to remit. Is not this the language of a christian acting under a just view of what was due from himself individually, and the public station he filled? The forgiveness of injuries is one of the precepts of our religion,

* See the evidence of the plaintiff's own witnesses, Dr. Harris, Mr. Wm. Irving, and Dr. Wm. Hamersley, on this point.

and bishop Hobart most scrupulously obeyed it. Whatever was offensive or injurious to himself he forgave, but he would not commute his duty for a little short lived popularity. And though he forgave Mr. Jones, it could not be expected that he could again renew the same friendly and confidential intercourse that had once existed between them. He could not be required to take again to his bosom the viper that had well nigh stung him to death. No, he might cast him off and say, depart in peace, I forgive you for what is past; but you shall never return to the confidence you have abused, to the friendship you have betrayed. The heart that has been once deceived is slow to trust again; but in such a case to trust without the slightest acknowledgment of error, without one penitent sigh, one promise of amendment, would be worse than madness. Not only was nothing of this kind offered, but the very apology that was suggested by Mr. Jones's friend,* *that his pamphlet would be considered a mere electioneering trick*, shewed his utter unfitness ever again to minister in holy things. What is an *electioneering trick* but a combination of every thing that meanness, falsehood and artifice can contrive, to deceive and impose upon those whom it is to affect. The true character of this publication is thus stamped upon it, by the hand of a friend who knew its author well. And for this electioneering trick upon the convention of this state, in the choice of a most important church officer, you are called upon to reward Mr. Jones by increasing the compensation that has been allowed him.

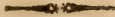
Mr. Jones's conduct and his motives are now before you. It is for you to examine and appreciate them. He has talked long and loudly of the persecutions with which he has been beset, and even honest minds have been poisoned with the belief of their truth. The delusion, however, cannot be of much longer continuance. The broad lights that this trial have thrown upon a subject much misunderstood, and more misrepresented, will dispel every doubt that yet rests upon it. Can you say that he has made out a meritorious case, or one, indeed, at all entitled to your favour? Has he

* See Dr. Harris's evidence.

not, on the contrary, shewn himself unworthy of it, and that if he had been dismissed without any pecuniary allowance whatever, justice would have been satisfied? But let me ask, how can you with any degree of self consistency increase the compensation that has been allowed? For, if you establish the validity of the proceedings and sentence against Mr. Jones, and which you must do before you can touch the question of compensation, it must be because both were regular. Now if they were, was it not Mr. Jones's duty to submit to them? He could no more object to the compensation, than to any other part of the proceedings; nor in fact did he ever put his refusal to obey them on the ground of the compensation's being too small. How can this court be better judges on this subject than the bishop and his presbyters were? By what rule can they undertake to settle the amount that ought to be paid, differently from what has been done? It is enough for you that the sum has been fixed by those who had a right to fix it, and who were the most competent to determine what was fair and reasonable in this respect. By confirming the sentence you clearly determine that Mr. Jones was bound to obey it, and as he refused to do this, surely you will not reward him for his disobedience; you will not pay him for a deliberate breach of his duty.

This is a cause, whose importance is not confined to Trinity Church; it is one in which every religious denomination has an interest. The preservation of ecclesiastical government, and its coercive powers, are essential to the existence of every church, and must, therefore, be dear to the heart of every christian. Suffer them not then, I entreat you, to be pulled down, lest the pillars of the temple should also tumble with them into ruin. You cannot more effectually prevent this than by frowning on every attempt to appeal from the ecclesiastical to the civil tribunals. If, however, you increase the compensation in this case, you set an example of the most dangerous kind. It will induce the turbulent and discontented to venture on similar experiments, in the hope of similar success. But I cannot prevail upon myself to think that this court will sit here to settle the price that shall be paid to Mr. Jones for contemning the lawful authority of his

church, to fix the premium that shall be awarded for the violation of the most sacred duties and solemn vows. I will rather indulge the belief that we shall receive at your hands an entire and unqualified confirmation of the proceedings and sentence in this case, and that you will thus vindicate the honour of the church, preserve her peace, and establish her discipline.



MR. EMMET.

In a case where warm feelings are excited, and delicate duties to be performed, the advocate but little knows himself, who thinks he knows the degree of moderation and forbearance with which his argument will be conducted. If frequent experience had not already taught me this truth, I should certainly have learned it from what has occurred in this cause, Every counsel that has preceded me, has commenced by professing to abstain from all invective and personal abuse; but my adversaries, while they accuse my learned associate of departing from that profession, have abundantly exercised the same privilege themselves. For my own part, I am utterly unable to say what line of conduct I shall in this respect pursue; particularly as, at this moment, burning provocation is working on my fixed and predetermined resolutions. I know, indeed, the great outlines of my cause, I know its members and leading features, I am familiar with its minutiae and details; but I can promise nothing for the warmth or glow of colouring, which the enthusiasm of the moment, and the present sense of my client's wrongs may induce me to employ in presenting them to your view.

Indeed, before the argument of this cause, I had established with myself certain rules of conduct, to which (notwithstanding all that I have heard) I shall still endeavour to adhere: I had resolved that whatever my duty should oblige me to urge plainly, should be urged decently—that I should keep in mind the sacred and elevated station held by one of the actual parties to this cause—that I should endeavour to treat

him with respect as one of the heads of the church, in the principles, and under the discipline of which I have been brought up;—and that I should, therefore, cautiously refrain from discussing the merits of the controversy between him and my client, so far as they can be separated from the matters submitted to the present arbitration. If hereafter the perusal of the evidence and documents in this cause, as applied to the allegations contained in Mr. Jones's "*Solemn Appeal*," should establish an opinion unfavourable to bishop Hobart, and injurious to his usefulness in society, I was desirous that it should arise only from calm and dispassionate reflection in the closet, and that no heated or inconsiderate expression of mine should contribute to produce that effect. There was also another decisive reason for forming that resolution, I considered myself bound to it by a compact which my adversaries, however, have on their parts totally set at naught. I imagined we entered into this arbitration under a mutual stipulation, that the truth or falsehood of the facts alledged by Mr. Jones, should not be brought into discussion.—That opinion was founded on the following facts, disclosed in the evidence. A number of the most respectable episcopalians of New-York (who nevertheless could not escape the animadversions and asperity of the opposite counsel; because, not being permitted to meet in a church, and being too numerous for any private room, they assembled, as it is fastidiously said, in a tavern,) convened at the mechanic-hall, and appointed a committee to confer with a committee of the vestry of Trinity Church on the best mode of terminating the disputes that had arisen in their religious communion. The committee of episcopalians made propositions which are to be found in the following extracts from the evidence, page 179 180.

"We hold that a priest is not responsible to his congregation or to his bishop, for any part of his extra or unofficial conduct, which his civil rights and moral duties authorize.

That he has a civil and moral right to publish truths unfavourable to any active enemy, in order to diminish his power

or opportunity of doing injuries, and in order also to manifest the propriety of his own conduct relative to such an enemy.

That every free citizen, who is interested in the election of an officer, civil or ecclesiastical, has a civil and a moral right to publish *truth*, calculated to show that this or that candidate is or is not qualified for the office.

If those propositions be true, it appears to us that the only question to be decided is, whether what Mr. Jones had published previous to the sentence against him, to wit, his pamphlet called a "Solemn Appeal to the Church," was *true* or *false*.

To decide this question, we propose to the vestry.

1st. That bishop Hobart shall bring an action for a libel or for slander against Mr. Jones.

2d. That Mr. Jones shall plead that the whole is true.

3d. That if the court and jury should acquit Mr. Jones he shall be replaced in statu quo.

4th. That if the court and jury should find him guilty, then those whom we represent shall cease to support him, and Mr. Jones shall acquiesce in the sentence.

5th. That until the final decision of the suit so to be instituted a sum of money equal to Mr. Jones's former compensation shall be regularly paid to him by the vestry.

To this the committee of the vestry replied,

Gentlemen,

The committee of the vestry of Trinity Church have reflected upon what passed at their conference with you last evening, and it does not appear to them that the written proposition you made them would be calculated, if accepted, to allay, but would rather tend to increase the irritations which at present unfortunately exist, and for this and other reasons they decline them; but being truly and sincerely desirous to agree upon any measure which may afford a prospect of healing divisions, without violating their own duty or self-respect, they propose to you, to submit to the arbitration of respectable men, to be mutually agreed on, all the

existing legal differences now subsisting between the vestry and Mr. Jones."

An offer was thus made to the defendants, to enter into an examination of the truth of Mr. Jones's publication, which was declined, and an arbitration expressly predicated on that refusal, was subsequently agreed to. When I read this evidence, I rejoiced that I was freed from the necessity of examining into the merits of that controversy, and of seeking from thence to criminate bishop Hobart. But how am I now to express my surprise and indignation, at the acrimonious invectives you have heard, founded on the presumed, and the unjustly presumed, falsehood of Mr. Jones's allegations? Am I to be bound up by a compact, which has indeed impaired my means of attack, by preventing the examination of many of those witnesses, by whom the truth of those allegations might have been most abundantly proved; but a compact which on the argument my adversaries have thought fit to disregard? I will still submit to be bound by it, so far as to restrain myself from urging those allegations (even where they may have been substantially established) with the view of inculcating bishop Hobart.

For the purposes of this argument, I shall permit it to be supposed, that Mr. Jones may have drawn erroneous inferences from the facts he has stated. But my duty towards him and my regard to truth will compel me to insist on the veracity of his statements, and to repel and refute the abuse and calumny which have been heaped upon him. Of these the learned counsel who opened the defence furnished an item that I confess I listened to with surprise; he accused the plaintiff of having instituted this action merely for the mean and pitiful purpose of putting a little money in his pocket. If he *had* instituted this suit, merely to obtain compensation for the severe and unmerited pecuniary injuries he has sustained, the greatness of those injuries might have shielded him from such an observation. But it is in every point of view unjust. This action has been instituted in consequence of the arrangement entered into by the committee of episcopalians and the committee of the vestry, as the only prac-

licable way of bringing into legal discussion all the matters in controversy between my client and the vestry, and it is conducted much more under the direction of his friends than of himself. Before the learned counsel had indulged in this observation, I wish he had pointed out any other form of action, by which my client could have tried his rights without appearing to ask for compensation in damages. If many of the arguments urged before the arbitrators have weight, most assuredly he could not do it by mandamus. And our law ordinarily tries the claim of private rights, only by actions demanding compensation in damages. Let me then appeal to the reflection and candour of my learned adversary himself, and ask, was it fair or just to vilify the plaintiff by this insinuation, and to assign, what was considered as a mean and dishonourable motive for a course, in truth, not attributable to him at all, and which was only adopted by his friends, because no other was to be found in the system of our law?

But the charges and insinuations against Mr. Jones are not confined to acts merely mean and pitiful; crimes and misconduct of a greater nature have been urged against him on the hearing of this cause. I had hoped, indeed, that the opposite counsel would have imitated the correct and dignified conduct of Mr. King and of Mr. Harison before the presbyters, to whom the same matters were submitted as are embraced in this arbitration, and before whom any misconduct on the part of Mr. Jones might have been as properly stated as here. Those gentlemen, it appears by the testimony of Mr. Haskill, Dr. Harris, Mr. Feltus, Dr. Moore, and Dr. Bowen, studiously declared that they made no accusation against Mr. Jones. That his moral character and conduct were irreproachable, and that he was a faithful and pious pastor; but that he had published a book, from which dissensions had arisen, and which they obviously lamented rather as a misfortune than as a crime. Now, however, the learned counsel, echoing the assertion of bishop Hobart to Mr. Wm. Hamersley,* state that Mr. Jones has committed an offence of the highest nature against the church. If this charge be intended, according to the

* See page 131 and 132.

meaning of the expressions used, it is serious and heavy indeed. If it be only a declamatory mode of stigmatizing some indiscreet or ill considered act, it is an inexcusable exaggeration, and a culpable perversion of terms, whether we consider it as used by one of the heads of the church, or as spoken of one of its ministers. It is, moreover, one of those contrivances by which public feeling is to be excited and unmerited odium is to be heaped on the plaintiff. That it is not true, I feel myself authorized in saying, on the authority of Messrs. Harison and King, who, if it were true, could not have borne their testimony to the irreproachable conduct of my client; nor could Mr. King,* as a witness, have expressed his hope that Mr. Jones might form a new connexion, which would be conducive to the welfare of the church. Nor could bishop Moore, in his conversations with Drs. Harist† and R. C. Moore,‡ have urged how much Mr. Jones might be useful to the church by going to Virginia. If it were true, how could bishop Hobart, in his conversation with Dr. R. C. Moore,§ at the foot of the altar, solemnly promise that *he would do nothing to hurt Jones*? And if it were true, let me retort an argument, triumphantly urged on the opposite side, and ask, why did not some of those bodies or persons authorized under the canons, present him for this crime? Is “an offence of the highest nature against the church” a matter of indifference to our bishops, our presbyters, our vestries and convention? Or have events shown that Mr. Jones possesses such peculiar popularity among them, as would screen him from the punishment due to such delinquency? Three presbyters might have presented him; certainly among the twelve who memorialled bishop Moore, to have him separated from Trinity Church, three might have been found sufficiently zealous for their religion, to have presented a clerical offender against it, of the highest nature! The vestry, the present defendants, might have presented him; and surely if a sense of justice did not restrain them, they were not prevented by any ill-judged predilection for the plaintiff. The

* See p. 259. † See p. 139. ‡ See p. 154. § See p. 153.

|| See Dr. Harris's testimony, page, 138.

convention, which manifested its attachment to bishop Hobart, and elected him for the episcopal office, might have presented Mr. Jones, for whom they showed no particular favouritism. Have any of those bodies spoken of him in this style? And have they all so far forgotten their duty, as to have neglected bringing an offender, of the highest nature against the church, before the proper tribunal? No, the charge is mere inflated declamation and idle sound; or it is injurious invective, with which controversial acrimony has sharpened the tongues of my client's adversaries. It has no foundation in candour or truth. He has committed no crime against the church.

It is true, he published a book charging Dr. Hobart with *ambition*, which our adversaries admit him to possess, and call it laudable; but which Mr. Jones, perhaps erroneously, considered as dangerous, though not criminal. In the same book he also charged Dr. Hobart with possessing an irritable temper; not in itself a crime, but a failing, and peculiarly to be dreaded in a candidate for the episcopacy. Further than this he did not go, and nothing can be alleged against him but that he made this publication. Our adversaries censure this act because, they say, it tended to impair Dr. Hobart's usefulness, and to destroy the peace of the church. Much of the correctness of this censure must, I think, depend on the truth or falsehood of those charges. If they are false, the publisher of them deserves to be severely reprobated; but if they are true, the propriety or impropriety of the publication must depend on a comprehensive view of the motives that produced it, and on the circumstances out of which it arose. I am tied up from discussing the truth or falsehood of those charges. It was declined by the committee of the vestry, who only consented to arbitrate on a basis entirely different from that discussion; but I must be permitted to say, that when Mr. Harison and Mr. King declared they had no charge against Mr. Jones; that his conduct was irreproachable, they must be considered as having tacitly admitted that he has published nothing falsely. Let me, on this subject, be explicitly understood. Since all discussion on the truth or falsehood of those charges has been waved, I do not intend

to urge their truth or justice as an inculpation of bishop Hobart: but I mean to repel the insinuations or allegations of their falsehood, as forming any just ground of censure against my client. I do not call upon the arbitrators to believe them true, with a view of insinuating aught against bishop Hobart. But I call upon them and the opposite counsel not to presume them false, in order, from thence, to draw conclusions unfavourable to Mr. Jones; and in this sense I beg to be understood in the future course of my argument. The question, then, of my client's alleged criminality, reduces itself to this: Is the mere publishing of a book, relating to the affairs of the church, and derogatory to some of its ministers, but which is not, and cannot be alleged to be false, an offence against it? I am not fond of the *argumentum ad hominem*; but its application here is so obvious and forcible, that I must be permitted to use it. Bishop Hobart has also published different books relating to the affairs of the church, and derogatory to the plaintiff and others of its ministers. Yes, but I am told he was compelled to do so in self defence. I admit the force of that plea. So far as publication was necessary for the justification of his own character and to repel accusations made against him, I acknowledge he did right. But shall I derive no advantage of exculpation to my client, no diminution of the obloquy and censures cast upon him for his publication; if I shall establish this fact, that the bishop, whose peculiar duty it is to preserve peace, harmony and love in the churches under his care, and to protect and befriend their ministers, has in those very publications from his pen, which are not only defended, but extravagantly admired and eulogized, sought, without any necessity of self defence, and with no view of refuting accusation; but in the mere spirit of acrimonious abuse, to undermine the characters, to destroy the usefulness of the clergy in his diocese, and to lay the foundations of dispute against them in the congregations with which they are connected? This charge so strongly made, let me support by proof. Mr. Jones in the "*Solemn Appeal*," page 1, speaking of the rev. Mr. David Moore, as having always acted civilly towards him, remarks, that for so doing he has met with no countenance from bishop Hobart.

The latter in his "*Letter to the Vestry*," page 7, notices this observation, and I am ready, for the present, to admit, sufficiently answers it. He shows that Mr. Moore never stood in need of his countenance; that very shortly after his ordination he was amply provided for, and that the opportunity of showing or withholding countenance from him has never yet occurred. Having done this, he unquestionably defended himself and repelled the accusation. But to no such motive or necessity can we ascribe the following passage in page 8.

"But had Mr. Moore asked or needed "my countenance," I was not without some reasons for declining to extend it. I was one of his examining presbyters. His father attended his examination; and from delicacy I abstained from taking part in it. Such was my desire to do nothing offensive to the feelings of Dr. Moore, that, notwithstanding some circumstances which occurred during the examination of his son which would have authorized me, I made no objection to his ordination. He recently applied for priest's orders under a deficiency in the requisite age; though the canons expressly enjoin a certain qualification as to age, from which they allow no dispensation; though the rubric before the ordination offices enjoins this qualification; and though every person ordained deacon or priest solemnly declares to the bishop, that he believes he is called to the ministry of the church "according to the will of God, and the *canons* of the same."

Is this self defence? Was there any necessity to assail the reputation and character of a young gentleman, in no possible manner a party to this controversy, and just entering on the ministry? Was it in order to increase his usefulness, to procure for him the respect and attachment of his congregation, and to promote peace and harmony in the church of St. Andrew's, Staten-Island, that bishop Hobart has accused him of making a false declaration, contrary to the canons and rubric of the church, and very little, if at all short of perjury?

The next instance I shall cite is, that of Mr. Feltus. Respecting this gentleman, the charges made against bishop Hobart were two, and only two: That he had drawn up a sheet of unfounded accusations against him, which he could not

substantiate; and that he had falsely accused him of forging his testimonials. As to the first, it is confessed he drew up the sheet of accusations, and it is certain he has never substantiated them. But I am willing, for the present, to admit the excuse, that they originated in misconception, and were not dictated by malevolence. The accusation of forging testimonials, bishop Hobart solemnly avers he never made; and although it is sworn to by two credible witnesses, I am willing, for the present, to receive his denial as satisfactory, and to presume that those witnesses have sworn in mistake. He has then sufficiently answered and repelled those accusations, by explaining one and denying the other; and having done so, he discharged the duty of self defence. What justification then can be produced for the following pages totally irrelevant to either of those accusations?

* “ This gentleman, though according to his own declaration originally a baptist, officiated for a long time among the Methodists, and was considered one of their number. His denial that he ever was a Methodist, though he officiated among them, and is said by many respectable ministers and others of that communion, to have belonged to their society, was certainly not calculated to inspire me with confidence in him. Nor was this likely to be excited by my knowledge of the fact, that while a preacher among the Methodists, he was distinguished for his violent, and sometimes abusive language concerning the episcopal church. The conviction, that he was not “ to be depended on,” if I may be allowed the phrase, was further confirmed by the opinions of many respectable persons of the Methodist communion, who had full opportunity of knowing his character. They spoke of him as “ a man in whom no confidence was to be placed,” pompous and violent often, but hollow and insincere in his professions. I was satisfied that this representation was not owing to resentment at his having taken orders in the church; because the same persons spoke in high terms of others who had received episcopal ordination.

“ These traits of character did not change with a change of communion. Even while a candidate for orders in the church, I am credibly informed, he was considered by at least

some among whom he officiated in the capacity of lay reader, as ready to attach himself to any communion that might suit his purpose; and was in the practice of mutilating the liturgy, and introducing extempore prayer. After his ordination, the same practice continued. His conduct was thus at variance with the high tone with respect to church principles, and to the order and the worship of the church, which on some occasions, and with some persons he assumed; while with others he could accommodate himself to a much lower grade of church principle. Though sometimes the loud advocate of order and panegyrist of the liturgy; in his own congregation in New-Jersey, he originated private meetings not sanctioned by this order, and where this liturgy was laid aside. And for some time after his settlement at Brooklyn, he could omit parts of the service required to be used, as suited his purpose. These were not solitary acts into which the most correct might be occasionally betrayed, or for which the force of some imperious circumstances could be urged as an apology; but they were frequently practised by him for years; even after the highest principles as a churchman were on certain occasions avowed by him.

“The traits of character imputed to him by many of his former associates of being “pompous and ostentatious,” were displayed by circumstances which, I think, cannot be known to any persons of delicate and correct minds, without exciting great disgust. At the convention of the church in New-Jersey, at Elizabeth-Town, before his settlement at Brooklyn, Mr. Feltus was called on to preach;—not on occasion of the meeting of the convention, or on any other particular occasion, but when an ordinary sermon would answer. He prefaced his discourse, containing nothing peculiar to the occasion, with an apology for the short notice, as if he had prepared the sermon after he was requested to preach. It was not presumed that he would leave home at such a time, in the expectation of visiting New-York, without being well stocked with his best discourses. The design was too apparent to impress the congregation with a high sense of the promptness and ease with which he could prepare a sermon at a few hours notice. A discourse from the same text was a few days

afterwards preached by him at New-York and Brooklyn.— And the presumption is therefore strong that the discourse had been previously prepared. But admitting the fact of its rapid preparation, to have stated the circumstances to the congregation was an attempt to make the altar of the sanctuary serve the purposes of vanity and adulation that cannot but excite the greatest disgust. I well recollect the disgust which was expressed to me by a person who heard Mr. Feltus, on another occasion, inform a congregation that the text on which he was to address them was mentioned to him on his way to the church, with a request that he would preach from it. Vanity is a *foible* when indulged in the circles of private friendship; but when it intrudes into the sanctuary; when it raises its pretensions in the presence of God; when it pollutes our “sacred things;” to palliate it with this appellation would be charity greatly misapplied.”

Is this also self defence? Was this called for in answer to either of the accusations against him? Was this published to render Mr. Feltus useful in his vocation, or to preserve the peace, harmony and attachment of St. Ann’s, Brooklyn? Is this to be excused and justified in an elevated prelate, while an infinitely less offence by an humble presbyter, is to be cried out against as one of the highest nature against the church; for which he is to be persecuted, maligned and destroyed? What a weak and erring thing is man! How unbounded in charity and liberality toward himself; how bitter and vindictive towards his neighbour!

But let me not ask for Mr. Jones’s vindication in the *argumentum ad hominem*. Let me defend his acts on their own merits. I have already said his publication must, for all the purposes of his defence, be received as true. Its character then as to criminality or justification must depend on his motives. What then were his motives for publishing the “*Solemn Appeal*?” The opposite counsel have gratuitously surmised for him some not very honourable; but he has avowed those by which he was actuated, in the pamphlet itself, pages 2 and 3.

“This subject is to be considered in another point of view. The church throughout this state has been summoned to meet

in special convention in the short space of five or six weeks. This measure has been effected without the least intimation being made to several of the elder clergy in this city, indeed to all who have hitherto been named, together with myself, except Dr. Hobart; only so far as it has come to our ears by general report. It is moreover, as is known, and is avowed, urged for the express purpose of advancing Dr. Hobart to the responsible, the important office of a bishop; an office, on the proper discharge of which, the peace, the good order, and the prosperity of our Zion most intimately depend. Now others, together with myself, do in our hearts believe, that Dr. Hobart is on several accounts utterly unfit for the office. We do believe, (and we solemnly appeal to the heart-searching God for the sincerity of our conviction) that his advancement will be promotive of a system of tyranny and intolerance, utterly incompatible with the state of things in this country; that it will be productive of great dissatisfaction and disunion in the church; and that it will subject the clergy to a state of servile submission, which would be highly disgraceful, and incompatible with the sacredness and religious responsibility of their character. We say nothing of his abilities. These we are ready to allow in their due extent. But we do think that he has particular traits of character, that he has qualities of mind and of heart, which far more than counterbalance whatever claim he may have to abilities, in disqualifying him for that high and momentous trust.

“Our conviction on these points arises from our knowledge of the facts which we are able to lay before the church. These facts have hitherto been concealed from public view. We firmly believe that when they are known, they will convince others also, of his unfitness for the situation contemplated. A question here presents itself, an awful, a penetrating question presents itself: “Believing as we do, can we answer it to our conscience, can we answer it to the church of Christ, can we answer it to our God, if we withhold these facts?” Without giving them publicity in the first instance, we have sought, since the agitating of this affair, to bring them, in a private way, to the knowledge of those, who might have been able

to arrest its progress. But these, through motives of delicacy have declined entering upon an investigation.

“What then is to be done? shall we sit down with folded arms, and silently acquiesce in the promotion of a measure of so much moment, which we do think in our hearts to be improper, which we do apprehend will be destructive? The entering on an investigation before the church, is certainly an evil. But is not the advancing of an improper person to the office of a bishop in the church of Christ, a greater by far, and a more lasting evil?”

If in this passage Mr. Jones be sincere, which no man has ventured to disprove, and which no one without disapproving has a right to question, but without insisting on the truth of the facts he has stated, let me ask, if he believes them to be true, was he to hide within his bosom these solemn and strong convictions? To bury them in secret, and permit a man whom he deemed unfit for the episcopacy, to be elected to that office? The opposite counsel say he was, in no event, to publish, and they deny the correctness of the positions submitted by the committee of episcopalians to the committee of the vestry.* “That a priest is not responsible to his congregation or his bishop for any part of his extra or unofficial conduct, which his civil rights and moral duties authorize; and that every free citizen who is interested in the election of an officer, civil or ecclesiastical, has a civil and moral right to publish truth, calculated to show that this or that candidate is, or is not, qualified for that office.” I might well permit those positions to maintain themselves by their own internal strength; but I am happy to support them by an authority at all times respectable, and in this case peculiarly unquestionable. I mean that of bishop Hobart. In his letter to the vestry, page 82, he very correctly observes, that “no secular concern could be transacted with safety or success, if an analysis of the characters of individuals, and free conversation concerning them among those engaged in the management of this concern were not permitted. There is no man who does not find it absolutely necessary to act upon

* See page 179 and 180.

this principle in the affairs of the world, and surely in ecclesiastical matters, where those qualities that are calculated to excite distrust of their possessor, are even more dangerous and injurious than in temporal interests, the exercise of this principle is more justifiable. Care must indeed be taken that it be exercised only for good reasons, and only to a necessary extent." I adopt the principles thus laid down, with all their limitations, and shall endeavour to show that Mr. Jones has not exceeded them.

The gentlemen on the other side contend, that he has, and that he should have confined himself to expressing his sentiments in the convention, where the choice was to be made. I say no; if he was justified in seeking to prevent the election of bishop Hobart, and sincere in the belief of his unfitness, he did right, and it was his duty to publish his sentiments to the world; and this I say considerably, advisedly, and conscientiously. A bishop is the head of the whole protestant episcopal communion in his diocese; he is set over all its members, and not over the convention merely. Every individual in that communion is interested in his qualifications, in his character, in his talents, in his suavity, in his piety, and purity of conduct; and every individual has a right to interfere in his election. In early ages, that election was made by the laity at large, conjointly with the clergy; their rights continue the same still, and the lay delegates to the convention, are only the representatives of their respective congregations. In point of fact, the congregation, on this, as well as on similar occasions, exercised this right of constituents, and instructed their lay delegates as to the person whom they would wish to be chosen. If Mr. Jones had delayed speaking till he could speak in the convention, when not only the instructions of the constituents, but, permit me to say, private intrigue and management might have already settled the result of the election, he would have scattered his words to the idle winds. By addressing the episcopal communion at large, who are the true electors, and upon whom improper motives would be less likely to succeed, he might have induced them to instruct and control their representatives, so as to defeat intrigues

and combinations which might possibly be on foot. If he erred at all, it was in delaying his publication; in not sending it at an earlier period, and with a more extensive circulation through the different congregations of the diocese. Perhaps, indeed, as Trinity Church enlisted itself in favour of the successful candidate, all his efforts would have been in vain; but that was the course of conduct pointed out by his conviction and his duty, and justified by the urgency of the occasion. A bishop is not to be elected in ignorance of his character and qualifications: no, there is not an office in our church, the candidate for which should be submitted to a more rigorous and even jealous public scrutiny. This, I grant, may be inconvenient and disagreeable to him, but the importance of his functions, and the interest of religion, require that his fitness should be thoroughly enquired into; and if he be found worthy of the office, the pains of his probation will be amply recompensed by the unbounded love and veneration of his flock.

But, it is asked by the opposite counsel, if these charges against Dr. Hobart are true, why did not Mr Jones present him according to the canon? To that I might answer, Mr. Jones, even if he wished to do so, could not have accomplished it alone; he must have procured the concurrence of two other presbyters, over whom he had no control; or he must have propitiated in his favour the vestry of Trinity Church, or the state convention. The true answer, however, is, he did not wish to do so. He neither wanted to suspend Dr. Hobart, nor to degrade him; he only wanted to prevent his elevation to the episcopacy, where his failings might be injurious. As a presbyter, he did not wish to interfere with, or impair his usefulness. But further, the matters specified in the "*Solemn Appeal*," although important as to the object for which they were published, could not, with any propriety, be considered as a fit subject for presentment.

The 25th general canon of the church* designates the crimes and scandals to be censured, by the expression, "wickedness of life;" and the proceedings against persons

* See page 36.

offending, are directed to be "according to such rules or process as may be provided, either by the general convention, or by the convention in the different states or dioceses." The general convention has made no further rule on this subject, and the state convention, by the 1st canon passed in 1802, has directed, that every trial of a clergyman in this church, for misbehaviour, shall be on presentment, made to the bishop, by the convention, by the vestry of the parish to which a clergyman belongs, or by three or more presbyters of the church; and, that in every presentment, the charge or charges shall be distinctly specified. The state canon is, I think, made in subordination to that of the general convention. It would then scarcely do to call petulance, irritability of temper, or ambitiousness of disposition, *nickedness of life*; or else, God help us all, laity, clergy, and prelates! Nor could they even with any propriety be called, such misbehaviour as should subject a clergyman to ecclesiastical censure, suspension, or degradation, unless by an outrageous indulgence, they were accompanied with acts of evil example, subversive of public peace, or violating public decorum. Mr. Jones, therefore, had no other course, if he thought himself conscientiously bound to act, but to publish. He did so, perhaps he was imprudent, and acted contrary to the calculations of worldly wisdom, for that he has severely suffered; he has brought upon himself much of misery and misfortune. He has brought them upon those with whom he hoped to share much better destinies. *Yet even this pang will find a solace—for he boldly claims your justice. In naught has he offended—he will not let go his integrity.**

Let me not too rashly say, in naught has he offended. It is urged against him, that he has noted down and treasured up confidential conversations between him and bishop Hobart. Supposing it true, is that the act which constitutes "an offence of the highest nature against the church?" And let me further ask what can be its possible bearing on this cause? If it should have none, why has it been mentioned and urged? The answer is not difficult. The evidence be-

* See *Letter to the Vestry—conclusion.*

fore the arbitrators shows, that Mr. Jones has been treated with singular injustice and cruelty. To prepare the way for that treatment, and to prevent its shocking the public mind, it was necessary to overwhelm him with prejudice and odium: for that reason, this foolish allegation was first conjured up; and it is now renewed, to blunt the feelings of the arbitrators as to that injustice and cruelty, and to create a kind of set off in their minds, against the injuries he has sustained. I must, therefore, be permitted to notice and refute the charge, however irrelevant to the real merits of this case. What are those notes that are so strangely cried out against? One of them is a representation of ill treatment, which was avowedly drawn up to be submitted to the bishop. On a reconciliation, effected by Dr. Harris, it was laid aside, and never thought of or brought forward again, until that reconciliation, and the terms of it had been broken. This is a statement of three distinct transactions. The two first were not noted down at the time, nor for a considerable period afterwards; but, when the third took place, which gave to the two which preceded it a more decisive character, and when it was determined to lay the whole before the bishop, an account of the two first was made from memory, as part of the matter to be submitted to bishop Moore. This is one of the mean and dishonourable acts, called noting down confidential conversations! Of the truth or importance of those facts, I do not mean to speak; I cannot, however, help observing, that the opposite counsel, in their vindication of bishop Hobart, have triumphantly expatiated on the two first of them, which are certainly of the least importance, and have always been so considered; but they have been perfectly silent on the third, as well as on the matters contained in the second statement. This last was not indeed drawn up with the same view, but the motive for it was equally strong and justifiable. The enormity of making this minute, is said to be, that Dr. Hobart was then living with him in unsuspecting friendship and brotherly affection. Entirely a misrepresentation! The heading to this minute bears date the 7th of April, 1810. Then indeed, the dissensions among the clergymen of the city of New-York were not much known to

the laity; but they were already deep-rooted, and their existence and extent were a matter of notoriety in the ecclesiastical body. As a proof of the then existing "brotherly affection" from Dr. Hobart to the plaintiff, let me refer to Dr. Harris's* evidence. "The deponent asked Dr. Hobart whether it was with his consent that the plaintiff was left out of the standing committee? *he said it was*; and that Dr. How and Mr. Lyell were for doing it in 1809, but that he had prevented it; and not because he thought that the plaintiff ought not then to have been turned out; *for he had no doubt of the justice*, although he had of the policy of such measure." It appears then, that in 1809, some months previous to the commencement of those minutes, Dr. How and Mr. Lyell were secretly endeavouring to remove Mr. Jones from being a member of the standing committee, one of the most honourable situations a presbyter can enjoy; and that Dr. Hobart prevented it, not from feelings of "unsuspecting friendship and brotherly affection;" but from *policy*, lest the attempt should recoil on himself and his friends. A few months, however, after the date of the heading of this minute, when matters were further ripened, he actually embarked, and succeeded in accomplishing that measure, which Dr. Harris† says he considers to have been in violation of the spirit of that reconciliation, which had been effected by him, between Dr. Hobart and Mr. Jones. In this state of dispute and heart-burning, when an attempt to disgrace and dishonour Mr. Jones had been only postponed by Dr. Hobart and his most confidential friends, from motives of policy, and when it was in practical progress to be successfully renewed, he began to take minutes, to which he prefixed the following heading, indicative of their motive and object, "*Solemn Appeal*," p. 30: "As I am seriously apprehensive that the affairs of the church in this city are drawing to a crisis; and that some unhappy consequences will ensue, when it may be necessary to recur to facts and dates; it appears proper, while the circumstances are fresh in my mind, to set down the substance, and as far as I can recollect, the particulars

* See page 135.

† See p. 146.

of some late conversations had with the parties mentioned. For the truth of the relation, in every particular, as far as my memory serves, and without any mental reservation, I solemnly pledge my veracity; and shall be ready, should I be called on personally to seal it with my sacred oath." Was a prudent man, who was made to feel the unhappy differences that then existed, and truly foresaw the consequences to which they would lead, was he not justified in preserving the memory of facts and dates, and thus guarding against the misrepresentations which design, forgetfulness, or intemperate passion might give rise to? But, what is meant by the term *confidential conversations*? There is not a fact stated in those minutes, that was a secret, or intended to be so. They were known to the clergy generally, and not confidentially spoken to the plaintiff. The discussion of them with him, was, however, conducted, as he conceived, in an overbearing, irritating, and insulting manner. He may be wrong, but he acted upon this opinion. Now give me leave to ask, is every expression of abuse or insult, which one man may use to another, in the absence of witnesses, a *confidential communication*? For if the irritating and insulting language was not confidential, nothing in those conversations can lay claim to that epithet. Is the use of such expressions to one, towards whom actual steps of the most marked injury and disparagement, are meditated and taking, to be considered and respected as the unguarded effusions of momentary weakness, in the bosom of unsuspected friendship and brotherly affection? And yet, precisely on that foundation, does this foolish, or worse than foolish accusation rest. Mr. Jones, feeling injuries and repeated insults, foreseeing the progress of accumulating differences, and anticipating the future necessity of correct remembrance and accuracy, as to transactions, which in some shape or other, were likely to become subjects of unfriendly discussion, took minutes of them at the time; not for publication, but to assist and refresh his memory. He did not court or solicit the conversations or communications in question; they were not confidential, and they were obtruded upon him in a style, as he conceived, very little short of insult and insolence. This

is exactly what he has done, and his doing this, renders him, forsooth, a man "in whom no confidence can be placed!"

But another mighty charge against Mr. Jones is, that he never loved Dr. Hobart! To this, since it scarcely can be considered "an offence of the highest nature against the church," I may simply reply by a denial, and only refer to Dr. Harris's testimony,* "that Mr. Jones frequently, in conversation with the deponent, expressed his regret at the differences that subsisted between Dr. Hobart and him, and his wish that they were reconciled; and that during the first part of their connection in Trinity Church, he had lived with him as a brother, and could not have loved a brother better." This indeed it is said cannot be sincere, for Mr. Jones, at an early period charged him with ambition, and this they prove by reading from Dr. Harris's testimony.† "Previous to the fall of 1803, he thinks he has heard Mr. Jones say that he thought Dr. Hobart was rather too assuming." Thus far the learned counsel read; but he studiously avoided the conclusion of the sentence, which is as follows: "but the deponent did not think at that time that Mr. Jones wished to injure Dr. Hobart in the opinion of the deponent."

I omit to notice something of a similar purport cited from the deposition of Mr. Clark, because it is unsupported by similar evidence from any other person, and I really attach to it no belief. I was present at his examination, and regretted to see a witness testify, whose recollection was so erroneous, and in whom the traces of remembrance seemed so confused. If the arbitrators take the trouble of looking into his cross examination, and adverting to the names of the two committees of the vestry that made the reports set forth in the documents, they will feel the force of my observation. Confining myself then to the testimony of Dr. Harris, let me ask, even if I do love a friend as a brother, are my eyes to be entirely and forever blinded to his failings, and is it criminal in me to speak of those failings in real confidence, and without intending to injure him, to a sincere and common friend? But it is fit I should confess the fact, however much it may expose my client to the censures of the church, for the *high*

* See page 145.

† See p. 142.

offence it tends to prove against him: the opinion gradually established itself on his mind, that Dr. Hobart was too ambitious, too assuming, and too desirous of directing every thing and every one. I am afraid I must also admit, that in proportion as he became conscientiously convinced of the correctness of that opinion, his personal attachment to Dr. Hobart diminished, and he even ventured in two or three instances to lisp his suspicions to persons, who like himself were interested in the welfare and good government of the church: it cannot be controverted that he actually did say to Dr. R. C. Moore,* soon after the sitting of the general convention in 1808, "that he thought Dr. Hobart discovered undue ambition in his views." Enormous as was this offence, may I be permitted, in palliation of it, to say, that if the character of a clergyman is so very tender, as that no such remark respecting it should be permitted, clergymen should not write books or print vindications, comprising observations upon fellow ministers of the same communion; for I confess I do not think that observation of Mr. Jones, however culpable, can be compared for unmerciful severity, with what Dr. Hobart has written in his letter to the vestry, respecting Mr. David Moore, or Mr. Feltus.

In another instance also, which is testified to by Mr. Swords,† and prior to the meeting of that same convention in 1808, as appears by the date of a subsequent letter to Mr. Prentice, Mr. Jones did, in conversation with the rev. Joab G. Cooper, use these expressions, "it is all Dr. Hobart, you see how it is, it must all be done as Dr. Hobart directs." This observation, however, it appears to me, he was led to make by an erroneous representation from Mr. Swords himself, which also produced other consequences still more mischievous. The protestant episcopal society for the promotion of religion and learning had either directed certain tracts to be printed for distribution, or Mr. Jones supposed them to have done so. I am willing to adopt this last idea, because bishop Hobart seems to doubt whether the direction was given. Mr. Jones, however, is certain it was. Dr. Hobart was

* See p. 158.

† See p. 218.

the person to see it carried into effect, and it unquestionably was not done. Sometime afterwards, Mr. Jones enquired after those tracts, found they had not been printed, and that the money, which he conceived had been appropriated for that purpose, had, in truth been applied to other objects, perhaps as useful in themselves; but not equally meeting his approbation, or what he believed to be the views and direction of the society. He asked to whose order the articles, of which he did not approve, had been delivered? Mr. Swords made him an answer, which is stated in three different ways; in one way, by Mr. Swords in his evidence,* “that some were delivered by order of *bishop Moore*, some by order of Dr. Hobart, *and some by others not recollected;*” in another way by Mr. Swords in his certificate, which is published in bishop Hobart’s letter to the vestry, (page 50) “I told him those which formed the first item were certainly delivered by order of Dr. Hobart, and probably some others were delivered by the same order, *and some I added were delivered by order of other gentlemen,*” without naming *bishop Moore* as in the evidence. The same answer is stated in a third way by Mr. Jones in his “*Solemn Appeal*,” (p. 24,) “The only order which was noted was by Dr. Hobart; and I recollect to have understood, at the time, from Mr. Swords, that by *the same order the whole distribution was made.*” Intrinsic circumstances convince me that Mr. Swords is mistaken in both his statements, and that the last is the correct account of his answer. It is perfectly in unison with Mr. Jones’s observation to Mr. Coöper, which would be otherwise misplaced and unnatural. If after Mr. Swords had stated that some of the articles were delivered by order of bishop Moore, some by order of Dr. Hobart, and some by others not recollected, Mr. Jones had observed, you see how it is, it is all Dr. Hobart, it must all be done as Dr. Hobart directs, Mr. Swords, who had before heard and who was then convinced that Mr. Jones harboured unfriendly feelings towards Dr. Hobart, for whom and for whose character, he himself entertained a strong regard,—Mr. Swords I say would instantly and warmly have

interposed to correct him, and would have replied "No Mr. Jones, it is not all Dr. Hobart, you have no right to infer that from my answer; for I have this instant told you that some were delivered by order of bishop Moore, and some by others not recollected." And if he had thus corrected him, the circumstance would have been too marked to have escaped the recollection of any one present. I feel therefore perfectly persuaded that Mr. Swords's answer did give Mr. Jones to understand *it was all Dr. Hobart*, and that the warmth and resentment he expressed against Mr. Jones at a subsequent time, for asking a certificate of what he had previously led him to think true, was extremely ill judged and unjustifiable. This misconception then, created by Mr. Swords himself, caused Mr. Jones to use those unfortunate expressions to Mr. Cooper. Perhaps it also tended to excite the opinion expressed by him after the convention, to Dr. R. C. Moore: it certainly gave rise to every thing that has been thought objectionable in the letter to Mr. Prentice; and it probably strengthened, if it did not originate the opinion in Mr. Jones, that Dr. Hobart should be removed from the secretaryship to the convention.

This brings me to a third instance in which he also, about the same time expressed disapprobation of Dr. Hobart to the reverend Mr. Prentice; and with the unguarded expectation that he might communicate with him in unreserved confidence and friendship, he did the only thing that could for a moment seem to justify any part of the censures, cast upon him by his adversaries. Mr. Jones both wrote to and conversed with Mr. Prentice; the last I shall consider first, though subsequent in time. It is stated in his deposition,* and it does seem that the understanding of that gentleman has made out of the conversation, something harsher than Mr. Jones would seek to excuse; but in truth, every thing bearing the appearance of calumny or abuse, owes its birth to Mr. Prentice's understanding and not to Mr. Jones's expressions. Thus as to the very strong expressions, used by him in his direct examination, of Dr. Hobart's being "unworthy of the min-

* See page 226, 227.

ministerial office," and that he "had been guilty of the embezzlement of public money intrusted to him for a special purpose;" in his cross examination, † he says, he "does not mean to represent the expression in his direct examination, *unworthy of the ministerial office*, as having been used by Mr. Jones; but as the inference in his own mind from what Mr. Jones did communicate." One, and obviously the chief ground of disqualification for that office, he considered to have been suggested to him by the expression in Mr. Jones's *letter to him*, of Dr. Hobart's applying the monies of the church in the way which best suited his own wishes and views; which he conceived to evince a want of integrity. And as to the embezzlement of public money, in his cross examination ‡ he says, "Mr. Jones did not make any charge against Dr. Hobart of the embezzlement of public money entrusted to him, but this deponent was led to suspect the same, and it was an inference of his own mind from the expression in the before mentioned letter, and from the circumstances already stated; but this deponent does not now believe that Mr. Jones then intended to charge Dr. Hobart with such embezzlement."

This then appears to be the fact, Mr. Prentice, misconceiving Mr. Jones, and attaching what is now admitted to be a false import to his words, infers, that Dr. Hobart had been guilty of embezzlement, and was unworthy of the ministerial office, and that false inference of Mr. Prentice, is imputed to Mr. Jones as a calumny! Mr. Prentice refers chiefly to the letter, as having caused his misconception; and I am happy he does so, because, it being written and preserved, cannot be mistaken by imperfect recollection or excess of zeal. Before I advert to it particularly, permit me to observe that it was certainly written in the most unguarded confidence, to one with whom the writer was extremely intimate, and that its contents transpired only in consequence of the very unjustifiable act of a third person, who perused it without permission, and disclosed them. How the equally confidential conversation between Mr. Prentice and Mr. Jones was first made known to Dr. Hobart, and how Mr. Prentice became so far

† See p. 229.

‡ *Ibid.*

released from the honourable engagement which is supposed to bind gentleman to gentleman on such occasions, as to make it the subject of a voluntary certificate, I am not apprized. The letter, with all its imperfections is as follows :

To the rev. Joseph Prentice, Athens,
New-York, August 9th 1808.

Dear Sir,

I believe you are indebted to me. However, we will pass an act of insolvency, and open a new account. This, then, is so much to be put to my credit; and I have only to desire you to bear in mind, that the balance is against you.

This will be handed you by my worthy friend, the rev. Mr. Cooper. I rejoice greatly, that you will have so excellent a neighbour. I was very desirous of having him settled at Bloomingdale. However, I am equally pleased that he will be stationed at Hudson, where he will have a greater opportunity of doing good. You will, I think, be much gratified in his society.

I should have written to you by Mr. Cooper, when he first visited your neighbourhood; but knew not of the time of his departure, as he only passed through the city, and had not time to call on me. It was also my intention of fulfilling by him, my promise in sending you, "Potter, on church government." Indeed, as soon as I heard of a vessel in the spring, I immediately went to the library, with intention to send the above author; but as the books were not then arranged, it was out of my power to find it; and as the vessel was to sail that afternoon, it was out of my power to return home and write, and send my own copy. Since that, I have not known of an opportunity, except by Mr. Cooper. This will be my apology. I proposed at this time to send you the book; but Mr. Cooper mentioned that he possessed it, and would furnish you. You will from this obtain all the information required on the subject, and indeed, the source from which all the arguments are drawn.

When I last wrote to you, and recommended the dissemination of Fowler's Exposition of the Liturgy, I was not ac-

quainted with the intention of the Corporation of Trinity Church, to purchase a parcel to be distributed among the parishes. I rejoice at this arrangement, and I think that it will be productive of good. The disseminating of such books adapted to the capacity and to the instructing of plain readers, will do more good than all the controversial writings that ambition and self-gratulation can multiply. It was my expectation to be able to forward you before this, some parcels of Jones's Churchman's Chatechism and Wall's small tract on infant baptism. We had made an appropriation for this purpose, and appointed Dr. Hobart to get them printed. But I have waited in constant expectation of seeing them come out; though have heard nothing of them since, till the other day I enquired of the printer, and found that Mr. Hobart had applied the money another way, as suited his own wishes and views. This, I am sorry to say to you, is the way in which too much of the public business of the church is transacted. It is time that some enquiry should be made.

I am happy to learn the favourable disposition towards the church, which prevails among the Lutherans in your parish. I hope from some late circumstances, that the same disposition begins to prevail generally among those of that communion. It was mentioned to me lately by the bishop, that an indirect application had been made to him to pave the way to a general union. This will probably be brought before the convention at our next meeting; and if any thing can be done towards an union, it is certainly a desirable object. I shall undoubtedly give it my hearty support.

Present my best wishes to our good friend Mr. Ritter. Also to your wife and family. Perhaps before the summer is gone, I may make out to be spared to take a little tour and see you.

In the mean time belive me, with great regard,

Your friend and brother in Christ,

CAVE JONES.

The first passage to which any objection has ever been raised, is this: "The disseminating of such books, adapted

to the capacity and to the instructing of plain readers, will do more good than all the controversial writings that ambition and self gratulation can multiply." This, it is said, surely applies to Dr. Hobart, and is a malevolent insinuation. Suspicion must, I think, be very much alive to put upon it that construction—but, *qui capit ille gerit*. The only other passage complained of is this, "I found that Mr. Hobart had applied the money another way, as suited his own wishes and views. 'This I am sorry to say to you, is the way in which too much of the public business of the church is transacted. It is time that some enquiry should be made.'" This paragraph does certainly express what Mr. Swords led Mr. Jones to believe was the fact, and truly, but confidentially, discloses what were his sentiments on that fact. It may have been extremely foolish and ill advised in him to make those sentiments known to Mr. Prentice; but unguarded as he has been, I must admire the sagacity which could infer from this passage, that Dr. Hobart had been guilty of the embezzlement of public money intrusted to him. Mr. Prentice, however, does not stand unrivalled in the quickness of his perceptions. Bishop Moore, in a conversation with Dr. R. C. Moore,* and in another with Dr. Harris,† considered Mr. Jones as charging Dr. Hobart with *swindling*? Is there no gradation of expressions in the minds or mouths of ecclesiastics, by which they can mark the infinitely varied shades of misconduct? Must they always consider imprudences, improprieties and indiscretions as acts of "embezzlement," and "swindling," or as "offences of the highest nature against the church?" Or is this inflated and exaggerated style adopted on any systematic plan of ruining an individual, by raising outcry and odium against him in that unthinking mass of men, who attend more to words than things?

The counsel on the other side, after having established to their satisfaction, that Mr. Jones never loved Dr. Hobart, produce a striking contrast, by stating, that until the publication of the "*Solemn Appeal*," Dr. Hobart was always willing to be reconciled to Mr. Jones. If this were only urged

* See p. 153 and 154.

† See p. 139.

to show the forgiving temper of Dr. Hobart, and not to prove the unforgiving dispositions of my client, I should pass it by without remark: as it is, I shall only observe on it by reading an extract from the evidence of Dr. Harris.

“That previous to the publication of the “Solemn Appeal,” the deponent had frequently urged upon Dr. Hobart the propriety of a settlement of differences between him and the plaintiff, and that he told Dr. Hobart it was a very painful thing for him, the deponent, having been in habits of intimacy with both; that it was not as it used to be; he was so averse to a reconciliation. The deponent says that there had been former differences between Dr. Hobart and the plaintiff, which Dr. Hobart appeared willing to have reconciled, and which were reconciled at the deponent’s house. And the deponent says, that when urging him to a reconciliation with the plaintiff of their present differences, the deponent told Dr. Hobart that he, the deponent, was persuaded that he was influenced by some other person, which Dr. Hobart altogether disavowed. The deponent asked Dr. Hobart whether it was with his consent that the plaintiff was left out of the standing committee; he said it was; and that Dr. How and Mr. Lyell were for doing it in 1809, but that he had prevented it; and not because that he thought the plaintiff ought not then to have been turned out, for he had no doubt of the justice, although he had of the policy of such measure. The deponent begged Dr. Hobart to consent that the bishop should call his clergy together, to talk over those matters; and that Dr. Hobart replied, that if the bishop should send for him he would not attend; for that there would be no peace as long as Mr. Jones was among them. The deponent says, that all these conversations of which he had spoken, were before the publication of the “Solemn Appeal,” and, as he believes, shortly after the convention of 1810. The deponent says, that not long after the sitting of the convention in 1810, he was sent for by bishop Moore, and the deponent called on him in consequence;—that bishop Moore observed, that he was sorry a report had got in circulation that there were differences among the clergy; and that he wished very

much that there might be a reconciliation. The deponent observed to bishop Moore that there would be no difficulty on the part of the plaintiff, for the deponent had frequently heard him say, that he was anxiously desirous of a reconciliation; but the deponent informed the bishop that he apprehended there would be difficulty on the other side: and then related to the bishop the conversation that had recently passed between Dr. Hobart and the deponent, as herein before stated, and particularly that part of it in which Dr. Hobart said, if the bishop should send for him he would not attend."

Here then we find Dr. Hobart, before the publication of the "*Solemn Appeal*," not only refusing reconciliation through the mediation of Dr. Harris, but refusing to attend his bishop; not from any pretended objection that such interference is authorized by no canon, but because "there would be no peace as long as Jones was among them." We find him (although he never harboured an unfriendly thought or wish against Mr. Jones, before the publication of the "*Solemn Appeal*," in May, 1811) actively assisting in the year 1810, to turn him out of the standing committee, and only not assisting in it the year before, from love for himself and his associates; not from regard to the plaintiff. We find him also, after he had succeeded in displacing Mr. Jones from the standing committee, avowing an intention (which has since ripened into action, and produced the whole of this unhappy controversy) of removing him from the diocese. And yet we are told Dr. Hobart entertained no unfriendly feelings towards my client! It may perhaps be true that he never spoke ill of Mr. Jones, or made any charges against him. If that be true, and if, as is alleged, his language was always respectful, I shall content myself with observing, that when he expressed himself respectfully of Mr. Jones, I presume he did it not hypocritically or falsely, but as he thought; and if he never spoke ill of one whom he had turned out of the standing committee, and wished to turn out of the diocese, I cannot but believe that Mr. Jones's conduct gave no room for his doing so.

The catalogue of my client's misdeeds is, however, not yet exhausted. He is accused of meanly and pitifully flatter-
 ing Dr. Beach, whom he had some time since vilely abused and calumniated. Supposing this fact to be perfectly true, what possible bearing can it have on this cause? Is Dr. Beach at all connected with this discussion? Why then is it introduced and stated to the arbitrators? That nothing may be left unsaid which can wound my client's feelings, or asperse his character. The man whom it is intended to injure, must be injured *per fas aut nefas*. Let me repel, however, the ill-founded assertion. The *mean and pitiful flattery* is to be found in the "*Solemn Appeal*," (p. 79.) "The first person who naturally and immediately presented himself for the appointment, to the mind of every dispassionate member of the church, was Dr. Beach. It was his right from his years, from his standing in the church, from his respectability of character." The *vile abuse and calumny* is testified to by Mr. Prentice.* "In the course of some or one of the conversations which took place between this deponent and Mr. Jones, the plaintiff, during his stay at Athens, aforesaid, or the ride from there to Albany, Mr. Jones observed to this deponent in substance, or to the effect following, that if bishop Moore should drop off within a few years, Dr. Beach would undoubtedly or probably come forward with his claim to be bishop; but that he was wholly unfit for the office, and ought not to be elected; and Mr. Jones added observations very disrespectful to Dr. Beach, at the same time or times." Here let me ask, in passing, *was not this conversation perfectly confidential?* How has Mr. Prentice been set at liberty to disclose it? The nature of his judicial examination, indeed, compelled him to give evidence of it as a witness, but how was he authorized to make it known *prior to that examination*, or to furnish to Dr. Hobart, as I think it clear he did, that document alluded to in the "*Letter to the Vestry*," (p. 128, note) which delicacy prevented even him, irritated as he was, from exhibiting to the world? My better judgment will not permit

* See p. 227.

me to believe, what the certificates and conduct of certain reverend gentlemen have sometimes almost forced me to suspect, that no conversation is treated as confidential by clergymen, except indeed those *tete a tete* interviews, in which one of the parties confines himself to offending and insulting the other. Mr. Prentice has, however, divulged and testified to this conversation, whatever it may have been; and it is my business to examine it. His expressions, in his direct examination, are round and strong; that he there “nothing extenuated,” may be seen from his cross-examination.* “In respect to that part of the conversation, testified to in deponent’s direct examination, which related to the unfitness of Dr. Beach for the office of bishop, deponent does not recollect any other objections specified, *except his disposition to indolence, that he would be led by the nose by Dr. Hobart and Mr. Lyell, and that his want of talent in writing was not suited for a bishop.*” *Parturiunt montes*; this is the vile abuse and calumny; these are the “very disrespectful observations”—he was indolent, his style of writing was not episcopal, he was very much under the influence of Mr. Lyell and Dr. Hobart! As to the two first observations, they are too insignificant to be noticed; as to the last, so far at least as relates to Dr. Hobart, setting aside the vulgarity of expression, which, I presume, like the redoubtable words *unworthy of the ministerial office*, is “the inference of Mr. Prentice’s own mind from what Mr. Jones did communicate,” every one who knows Dr. Beach knows it is true: the old man loved Dr. Hobart as his child, pushed him into notice as his child, treated him as his child, petted and spoiled him as his child. And there was nothing consistent with Dr. Beach’s notions of moral rectitude, in which Dr. Hobart could not have influenced him to acquiesce. It is not for me to investigate how the charm has been broken.

I have now examined the manifold charges and insinuations against my client; and in doing so, I am conscious I have consumed much of the arbitrators’ time, on a subject not strictly before them. But what was I to do? They

* See p. 229.

were brought forward and placed, as strongly as ingenuity and eloquence could place them, before your eyes. They were intended to deceive and mislead you, or to overwhelm me. Was I to allow them an uncontrolled effect upon your minds, if peradventure they could find entrance there; or was I myself to struggle through an argument on the real questions submitted to you, labouring and staggering under a weight of obloquy, which I felt myself able to shake off? Permit me also to ask, if my adversaries seized this opportunity of propagating, repeating and enforcing accusations very ill-founded, but very injurious to my client, was I not also bound to avail myself of the same opportunity, and to give to them a conclusive and triumphant refutation? I shall henceforward strictly confine myself to the subjects of the present controversy. In discussing them, I shall, I fear, be compelled to remark with some censure upon the acts of many. In every case I shall do it with regret; but for reasons not necessary to be particularly mentioned, I wish it had fallen to the lot of any other man in the community, except myself, to make the observations I shall be obliged to make, respecting Mr. King.

Mr. Jones, whether imprudently or not, from motives, the purity of which there is no room to question, published his "*Solemn Appeal*." Almost immediately after its appearance, the vestry of Trinity Church appointed a committee to take it into consideration, who expressed their disapprobation of it in the following report, which I shall beg leave to read, because, as it is the commencement of the transaction submitted to arbitration, it will require some comments.

"At a meeting of the corporation of Trinity Church, in the city of New-York, held in the said church on the 13th day of May, 1811:

"The committee to whom it was referred at the last meeting of the board to take into consideration a late publication of the rev. Mr. Jones, one of the assistant ministers of this church, entitled, "*A Solemn Appeal to the Church*," made a report on that subject, in the words following:

"The committee to whom it was referred to take into consideration a late publication of the rev. Mr. Jones, entitled, "A Solemn Appeal to the Church," have maturely reflected thereon.

"The publication in question appearing to relate to matters, the cognizance and decision of which exclusively belong to regular tribunals, established by the canons of the church, the committee deem it improper to present those matters to the vestry in any shape by which their merits may elsewhere be made the subject of discussion. Nevertheless, in reference to the relation which subsists between this corporation and the junior assistant ministers employed by it, the committee deem it the right and duty of the vestry to notice, and, as occasion may require, to animadvert upon such of the public acts of those ministers as may be calculated to affect the peace and welfare of the religious community with which they are united.

"The committee having, in this view, considered the subject referred to them, are of opinion, that the pamphlet lately published by the rev. Mr. Jones calls for the serious attention of this board.

"The evident tendency of appeals to the public on the subject of private differences between ministers of the gospel, must in all cases be to weaken the reverence and respect justly due to the clerical office; to destroy its influence, impair the discipline and government of the church, and to bring reproach upon the cause of religion.

"In the case of an associated ministry, like that of Trinity Church, evils more immediate and pernicious are to be apprehended, inasmuch as the people will naturally take part in the disputes of their pastors, their own passions and prejudices will be brought into the contest, and these must soon banish from the mind that peace and good will which can alone dispose it to the reception of religious instruction.

"That a course obviously involving consequences of such deep importance to the character and welfare of the church should have been resorted to by one of her ministers in the first instance, without even an experiment of the efficacy of

that sanctioned and prescribed by her canons, adds to the grief which every reflecting mind must feel on this occasion, and leaves less room for extenuation than might exist under other circumstances.

“ If these sentiments should receive the approbation of the vestry, the committee beg leave to recommend that a copy of this report, and of the resolution approving it, be transmitted to the bishop, and another to the rev. Mr. Jones.”

This report appears to me to contain much erroneous and disputable doctrine. In the first place, it assumes as the foundation of the censure it expresses, “ that the publication in question relates to matters, the cognizance and decision of which exclusively belong to regular tribunals, established by the canons of the church,” and it concludes by urging as ground of aggravation, that such a course as publication, “ obviously involving consequences of such deep importance to the character and welfare of the church, should have been resorted to by one of her ministers in the first instance, without even an experiment of the efficacy of that sanctioned and prescribed by the canons.” If I have at all succeeded in making myself understood, I have already shown, that the cognizance and decision of the matters contained in Mr. Jones’s publication, do not belong exclusively, or correctly to any tribunals established by the canons of the church; and that it would be a gross perversion of terms to attempt to bring them within the offences that are fit subjects for presentments. What course is intended to be designated by the expressions, “ that sanctioned and prescribed by her canons?” If they mean presentment, I have already shown that it was not a case for that course, and that even if it were, it was not in Mr. Jones’s power to make an experiment of its efficacy, without the assistance of others, whom he could not control, who might not be willing to range themselves by his side in the post of danger, or whom events have shown to be enlisted under the banners of his adversary. If the committee allude to any other course, sanctioned and prescribed by the canons, I know it not, nor do I believe it to exist. The insinuation is also untrue, that

publication was resorted to in the first instance. Mr. Jones's advertisement at the time declared, and the whole evidence in this cause abundantly proves, that frequent attempts at conciliation and amicable arrangement, had been made without success. The committee of the vestry, after stating that the matters in the publication belonged exclusively to the regular tribunals of the church, express strong disapprobation of appealing "to the public on the subject of private differences between ministers of the gospel." To me this seems incongruous; for if they were only *private differences*, and no public concern, I can scarcely conceive how the decision of them belonged at all to the ecclesiastical tribunals. But as the committee were wrong in considering them exclusively of ecclesiastical cognizance, so they were also incorrect in considering the matters of that publication as mere *private differences*. That undoubtedly was their original character, and such they would always have been, if Dr. Hobart had been destined to rise no higher than a mere presbyter of the church. But when he became a candidate for the episcopal office, these *private differences*, by illustrating a character and disposition thenceforward rendered important to the public, became themselves of public moment. The art of this report, (for it is artful,) consists in considering the case as existing merely between associated ministers of Trinity Church, and in keeping out of sight, that one of them is placed in a different point of view, which necessarily makes him a fit subject of public scrutiny. And under the pretence of its being merely a difference between associated ministers, the report eloquently remarks, that "the people will naturally take part in the disputes of *their pastors*, their own passions and prejudices will be brought into the contest, and these must soon banish from the mind that peace and good will which can alone dispose it to the reception of religious instruction." These remarks are not correctly applicable to the publication of the "*Solemn Appeal*;" but where they apply, they are just and forcible. Woe be to those, who, without the justification Mr. Jones can lay claim to, have industriously enlisted into this controversy the passions and prejudices of the people; who have by indefatigable ex-

ertions, banished from the minds of many of their communion, that peace and good will which can alone dispose them to the reception of religious instruction.

But the chief error in this report, and of the same character with most of the other errors that mark this controversy, is contained in the following passage; "Nevertheless, in reference to the relation which subsists between this corporation and the junior assistant ministers employed by it, the committee deem it the right and the duty of the vestry to notice, and as occasion may require, to animadvert upon such of the public acts of those ministers, as may be calculated to affect the peace and welfare of the religious community with which they are united." I have already remarked upon the artifice of making it appear that the whole controversy was between associated ministers, and of keeping out of view the very different situation in which one of them was placed. Let it therefore pass without further comment. But this paragraph contains a violent assumption of authority. If the possession of inordinate wealth and of proportionate power, had not made the vestry of Trinity Church forget their sphere of action, their rights and duties, this report would never have been made, and this controversy would never have existed. Their unwarrantable and unauthorized interference in a matter, with which they had no concern, is the cause of all the lamentable heart-burnings and dissensions in our communion; for, without their intermeddling, the contest would have peaceably died away, or existed only where it had been long cherished without observation, in the bosoms of the antagonists. The position is unequivocally erroneous, that it was either the right or the duty of the vestry, as such, to animadvert on Mr. Jones's publication. The individuals who compose the vestry, indeed, in common with the other members of the congregation, had a personal right to speak and think of that publication, according to their respective judgments. But part of the corporate body, wielding the wealth and power of Trinity Church, had neither a right nor a duty in their corporate capacity, because they paid the assistant ministers, as the mere trustees of the congregation, to animadvert on any

of their acts, not done in the course of their ministerial offices to that congregation. What is the vestry, and what are its rights and duties? They are to be found in the printed charter, (last edition, p. 19,) "*For the better ordering and managing of the affairs and business of the said corporation, there shall be annually, &c. two church-wardens and twenty vestrymen duly elected,*" &c. And afterwards, (p. 21) "and the said vestrymen, or any eleven or more of them (whereof the rector, &c.) shall, and may have and exercise the like power and authority for the ordering and regulating the affairs of the corporation and parish of Trinity Church, as the vestry of the said parish of St. Mary Bow, now have to exercise in reference *to parish affairs.*" I should like to know what would be the reception of such a censure on an extra ministerial act of the rector or even curate of St. Mary Bow, proceeding from the vestry of that parish—particularly if they be poor. I suspect the only reply they would be honoured with, would be, "*gentlemen mind your parish affairs.*" The only duty of the vestry is to take care of the temporal concerns, that is, of the property of the corporation. Beyond that, they have no rights or duties. They are not the pastors of the church. They are not its superintending power. In animadverting on Mr. Jones's publication, they were discharging no corporate duty. Indeed, this truth was felt by one of their own body. When Dr. Hobart, dissatisfied with the insufficiency of this report for his purposes, observed to Mr. Van Wagenen,* that the vestry had not done any thing, had not done half enough, he replied, they had done too much, and remarked, his reason for saying so was, *that it was not their concern—they had nothing to do with it.* The good sense and truth of this observation, ought to have occurred to the able penman that drafted that report.

But still, however violent the assumption of power, and however erroneous the principles upon which the committee condemned Mr. Jones, they may have been actuated by very laudable motives. Such are undoubtedly professed in the

* See. p. 129.

report; but, alas, the motives of men are seldom pure and unmixed; something mean and unworthy will often be found secretly combined with what appears most virtuous and honourable. Mr. King has avowed a motive for making this report, not to be collected from the chaste and dignified sentiments it expresses. In his evidence,* he states, as one of the bad consequences to be dreaded from the "*Solemn Appeal*," "the influence it might have upon the approaching election of a bishop:" and as the motive for making the report in question, he says, "as the "*Solemn Appeal*," was made upon the eve of the meeting of a special convention brought together for the election of a bishop to assist bishop Moore, I thought that its influence upon that measure would be diminished, by the tenor of the report of the committee." I confess, whatever I suspected to be the fact, I was scarcely prepared for the frankness of this avowal. This severe and dignified report, so imposing in its language, and plausible in its views, was an electioneering trick, artfully keeping out of sight the motives for its appearance, and the crisis which justified the conduct it condemned; affecting to consider the "*Solemn Appeal*" as relating only to private differences between two associated ministers, when in truth the report was itself prepared and pushed into the world, because that pamphlet related to matters of public moment, and was calculated and directed to the purpose of influencing the election of a bishop! Yes, this assumption of power, this perversion of principles, this haughty procedure of the vestry, this cause of all the misfortunes which followed it, was hastily gotten up, to array Trinity Church, with all its wealth and influence in favour of Dr. Hobart's election, and frown into silence Mr. Jones, and every other dependent, who might be inclined to exercise an independent judgment. It is true, if there had not been a weight attached to Trinity Church, which might be made to act as a power, and to hoist one man into a bishopric and another man out of the diocese, neither this report, nor the report of the subsequent committee, nor the resolutions of the vestry, nor any of the

* See page 251.

consequent proceedings would ever have been heard of. Let me recal to the recollection of the arbitrators the feeling and eloquent manner in which one of my learned adversaries caught an expression of Dr. Harris's, and reprobated the profligacy of using electioneering tricks in the sacred business of choosing a bishop. He mistook and mistated Dr. Harris; but I invoke his indignant declamation to my aid. Dr. Harris,* to induce Dr. Hobart to a reconciliation with Mr. Jones, said "it would shew so much magnanimity, and such a christian disposition, that it would lay all opposition at his feet, that the plaintiff's pamphlet *would be considered as an electioneering trick*; and that the plaintiff, if he had the disposition, could never have it in his power to injure him." My learned friend, misconstruing this expression into an avowal that the pamphlet was an electioneering trick, gave vent to the correct and noble sentiments for which he is distinguished. Now, however, that it is clearly ascertained to what that reproach should be directed, will he assist me with words of reprobation? will he join with me in saying, that although habit may in some measure excuse the culpable contrivances, which are often used for party purposes in our civil elections, yet in the sacred business of choosing a fit head to our religion, electioneering tricks are an abominable profanation?

This electioneering trick, however, succeeded: bishop Hobart was elected. The vestry at large, considered that transmitting a copy of the report of their committee to Mr. Jones was a sufficient expression of their disapprobation. Mr. Depeyster in his evidence† states "that from the facts within his knowledge, he is of opinion that the vestry would not have proceeded any further against the plaintiff than the first censure, if they had not been goaded on by Dr. Hobart and Mr. How." If this should be thought the expression of a heated partizan, I request the arbitrators to suspend their judgments until I shall have made some further examination of the testimony. After the vestry had thus expressed their censure upon Mr. Jones, no further communication of any

* See page 136.

† See page 117.

kind was made from them to him. Mr. King however (and it was the only instance even of individual communication) when consulted by Dr. Harris on the conduct Mr. Jones ought to pursue in consequence of the disapprobation of the vestry, said, that Mr. Jones should suppress his book as an evidence of his submission. This appears from Mr. King's testimony.* "After the general convention at New-Haven, in the month of May, 1811, and, as I believe, in the month of June following, in conversation with the reverend Mr. Harris, I observed to him that as the vestry had disapproved of the publication of the "*Solemn Appeal*," I had thought that Mr. Jones should immediately have suppressed it; instead of which, it had continued to be publicly distributed, copies of it had been furnished to members of the general convention, and that it still continued to be sold and circulated. I remember, and probably about the same time, to have made the same observations in the vestry, as evidence that the report concerning the "*Solemn Appeal*," which had been adopted by the vestry, had failed to have the salutary influence upon Mr. Jones, that it was expected it would have had." The relation by Dr. Harris of this conversation was the first and only intimation to Mr. Jones of what was expected of him: he immediately complied with it, as appears by the testimony of Walker and Hannay;† the book was suppressed, and information of its being done was communicated to Mr. King, as appears by his own testimony.‡ "Mr. Harris afterwards, and as I am persuaded, in the same month, June, informed me that he had communicated to Mr. Jones, my observations to him, that Mr. Jones remarked, that he had not been aware that the suppression had been expected; but that the remaining copies should be withdrawn from the book-sellers; which Mr. Harris said had been done." By the evidence§ it appears that on the 13th of this very month of June, the committee was appointed, which on the 5th of September made the second report. In the very month of June, then, either before, or very shortly after that commit-

* See page 252.

† See page 174.

‡ See page 252.

§ See page 196.

tee was appointed; either before, or very shortly after Mr. King had complained in the vestry, that Mr. Jones continued to permit the sale of his pamphlet, and urged that fact as a proof that he had not submitted, Mr. King knew that Mr. Jones had done what he himself had pointed out as the proper step to be taken, and had suppressed his pamphlet as a mark of his submission. He never communicated to the vestry this fact, although within his knowledge. In his own examination,* he says, "nor do I remember when, *if at all*, the vestry received information that Mr. Jones had suppressed the "*Solemn Appeal*," and afterwards "whether the conversation between me and Mr. Harris was communicated by me to the vestry, I do not recollect." Mr. Laight in his testimony,† says, "the deponent never heard in the vestry, that the plaintiff had suppressed his book, or had made any acknowledgement." Mr. King, then, with a perfect knowledge that Mr. Jones had done the thing suggested to him as necessary to show his submission and acquiescence under the censure of the vestry, and that he had not done it sooner, because he was not aware it was expected or required; never takes the sentiments of the vestry on this submission by Mr. Jones; never puts them in possession of the fact, but either permits the second committee to be appointed, or if it had been previously appointed, he permits it to go into operation; never, as far as there is any evidence or probability, states to the committee the decisive act by Mr. Jones, which had taken place since their appointment, or suggests to them the propriety of reporting it to the vestry and taking their opinion on its sufficiency; but he kept the secret from his constituents and colleagues, and he himself drafted the second report on which the subsequent proceedings were had, and which he justifies in his testimony,‡ by the allegation that Mr. Jones afforded to his parish *continual cause of dissatisfaction and complaint*, and that *he persisted in the vindication of his conduct*.

What, it may be asked, could be the motive for conduct so extraordinary? I think I shall enable the arbitrators to

* See page 252. † See page 225. ‡ See page 254, 255.

develope it, by the establishment of one position. There was a settled design on the part of Dr. Hobart, that Mr. Jones should be removed from Trinity Church, and even from the diocese: and this design was harboured prior to the publication of the "*Solemn Appeal*." To prove my position, I shall have occasion to refer to the evidence of Dr. Harris; and let me take this opportunity of remarking, that the opposite counsel have ventured to insinuate censures even against him. I had hoped that they would at least have abstained from insinuations against a man, whose piety and probity, whose goodness of heart and purity of life are not surpassed by any minister of our religion.—Who has been a constant peace maker, and mutual friend—who at length has been driven, contrary to his obvious interest, and if Mr. Depeyster * be right, at a very severe personal loss, to range himself from the most honourable motives, in support of Mr. Jones,—who, from feelings of ancient affection has taken his stand with grief and pain, though with firmness,—but whom no earthly motive could induce to be guilty of misrepresentation and mistatement.

Dr. Harris's evidence † sufficiently shews that this design of removing Mr. Jones, was harboured before the publication of the "*Solemn Appeal*." In a short conversation, prior to that publication, and shortly after the convention of 1810; Dr. Hobart "observed to the deponent that he (the deponent) was mistaken with respect to the plaintiff, that he had not so many friends as the deponent thought he had; that the plaintiff stood on very ticklish ground, and that if he did not take care, he, Dr. Hobart and Mr. How, would say to the vestry that either they must dismiss them or the plaintiff." And again, in a paragraph to which I have once before alluded, "the deponent begged Dr. Hobart to consent that the bishop should call his clergy together to talk over those matters; and that Dr. Hobart replied, that if the bishop should send for him, he would not attend; for that there would be no peace as long as Mr. Jones was among them." Mr. Jones, in the "*Solemn Appeal*" p. 85, asserts the same thing: "Dr. Hobart

* See page 118

† See page 134, 135.

has threatened in pretty intelligible language, even before this firm stand which I have made, that means would be taken to compel me to relinquish my living and leave the city." This assertion is by no means denied in the "*Letter to the Vestry*," but, on the contrary the conclusion of that pamphlet is obviously a vindication of such a resolution. I am not here imputing blame to Dr. Hobart for having formed such a resolution, perhaps he was perfectly right. My only object is to establish the fact, and from thence draw my inferences. The "*Solemn Appeal*" having been published, that resolution increased in force, or at least became more decisively expressed. Mr. Depeyster * states that he "had several conversations with Dr. Hobart and Mr. How on the subject of the plaintiff; that he does not recollect any thing harsh or improper said by Dr. Hobart, except the expression of Dr. Hobart, that the plaintiff ought or must quit the diocese; but the precise words he cannot recollect, the expressions were strong and decided, but not harsh or indelicate. One of his conversations with Dr. Hobart lasted two or three hours. That in one of the conversations deponent had with Mr. How, on the subject of the difference with the plaintiff, his expressions were vehement, all tending to the necessity of the plaintiff's quitting the diocese or parish, which he does not remember." Mr. Van Wagenen † testifies that Dr. Hobart called at his house next day (after the committee had expressed their disapprobation of Mr. Jones's publication) and observed "the vestry had not done any thing—had not done half enough." Shakespeare would have expressed this thought in his own inimitable language.

"You have scotched the snake, not killed it;

"She'll close and be herself."

Mr. Thomas Hamersley ‡ states, "sometime about a fortnight after the consecration, Mr. Irving and himself had a conversation with Dr. Hobart, who said Mr. Jones must quit the church. Afterwards, in the course of conversation, witness proposed some detached church which might have a seat

* See p. 121. † See page 116, 117. ‡ See page 120

in the convention. Dr. Hobart said, as to that, *he must quit the diocese.*" Mr. Irving* relates the same conversation, more at large, from which I shall only cite the latter part. "The deponent then observed, that he could not see how these things were to be remedied by ejecting the plaintiff from Trinity Church, because he might still be called either in the city or in the country within the diocese, and so remain a member of the convention. Dr. Hobart replied, Oh sir, he must go out of the diocese; and upon going round the counter, Dr. Hobart repeated the same thing." Again, "that as head of the church, he believed its peace and welfare required that the plaintiff should leave the diocese:" and again, "Dr. Hobart also observed, that if the vestry of Trinity Church had done its duty in the first instance, it would have occasioned a small ferment, but which would then have all subsided, and the church would have been at peace. Mr. T. Hamersley said he thought the vestry had gone far enough, and that he hoped or expected (deponent does not recollect which) that they would do no more; upon which Dr. Hobart replied, rather jocosely, well, I know what I can do. And, upon being asked by Mr. Hamersley what that was, Dr. Hobart replied, I will not tell you, I can keep my own counsel, and you at any rate will give me credit for energy of character." Mr. William Hamersley† testifies to another conversation with Dr. Hobart, and says, that "in this conversation, bishop Hobart manifested no disposition for a reconciliation with the plaintiff, but intimated that it was his opinion that the only way in which they could be settled, was, that the plaintiff should quit the diocese." Lastly, Dr. Harris,‡ in the month of June, 1811, urged a reconciliation in the warmest manner; to which "bishop Hobart replied, that it was unnecessary for the deponent to say any thing more on that subject—I am decided, Mr. Jones must quit." Here then is a settled fact unquestionably proved. Bishop Hobart, from motives with which I have no concern, was determined to effect Mr. Jones's removal, at least from Trinity Church, and if possible, from the diocese.

* See p. 121, 122.

† See p. 131.

‡ See p. 136, 137.

How was this to be done? If I am right, there was no canon or provision in the discipline of the church that could have removed him, except the very application of the vestry that has been since resorted to. It is certain bishop Hobart, and the adversaries of Mr. Jones, however violent, have either been conscious the mode by presentment was not open to them, or that it was too dangerous to be attempted; and the necessity of proceeding through the vestry is further illustrated by this observation, that Mr. Feltus has never been disturbed by presentment, or in any respect inconvenienced, although obviously extremely obnoxious; and why? because there were no means of working upon his vestry to quarrel with him and apply to the bishop, and no other mode of proceeding against him was in the power of his enemies. There was then no way of effecting, what bishop Hobart determined should be effected, but by the vestry. He complained they had not done half enough by their first resolution. They should have taken a step that would have produced a small ferment at the time, which, however, would have gradually subsided. Since they did not then do enough, bishop Hobart knew what he would do. He would not disclose it; but when done, he would not be accused of want of energy. What does he do? He publishes a letter to the vestry, commenced, as he says, five or six weeks before its publication, (that is, very shortly after a committee had been appointed, on the 13th of June, with a very vague title, on which I shall speedily observe, and after Mr. Jones's pamphlet had been suppressed. In the conclusion of his letter, (from p. 141 to 145) he more than urges the necessity of removing Mr. Jones. He informs them that he had been applied to, to interpose *with them* in his behalf, (although the evidence shows, that the vestry at large, except the enlightened few, did not then know that any steps were to be taken against Mr. Jones) but he assures them, that in his conscience he could not; that the good of the church, and even the *ultimate* advancement of that peace and quietness among christian people, which he had recently vowed to promote, forbade: and having broadly placed this before the vestry, he earnestly and respectfully solicits, that no act of theirs, at

their next meeting, might furnish a pretext for imputing this design to him!

“ Good friends, sweet friends, let me not stir you up

“ To such a sudden flood of mutiny.”

Was Mr. Depeyster prejudiced in his opinion, when he said the vestry were goaded into their subsequent measures? Am I wrong when I say the committee of the vestry was the instrument fixed upon for accomplishing bishop Hobart's long predetermined purpose of driving Mr. Jones, at least, from Trinity Church: and that his act of submission and acquiescence under the censure of the vestry, was not communicated to them, or to the committee itself, lest that object should be endangered? Indeed, the evidence in this cause, I think, strongly warrants the conclusion, that the vestry at large were to be kept in ignorance of any meditated plan against Mr. Jones, until the fulness of time for its execution should arrive. The report, as given in the documents,* purports to be the report of “ the committee on the state of the church:” an expression as vague as can well be conceived; it means any thing, every thing, or nothing, just as may suit the exigency of the moment. Mr. Depeyster† says, he “ supposed that the above committee was appointed for the purpose of considering of the expediency of separating St. George's and St. Paul's churches, and the various applications of other churches for assistance, and was to continue until those subjects were disposed of.” He goes on and says,‡ “ there never was, to his knowledge, any special reference of the matters in difference with the plaintiff, after the report of the committee to whom the plaintiff's book was referred, had been agreed to; nor a word spoken on the subject, afterwards, in the vestry, to his knowledge. The deponent had no previous knowledge that it was intended to take any steps respecting the plaintiff, at the meeting of the vestry which received the report of the committee, in September, 1811;” and he further says, “ he is very certain that he had no ex-

* See p. 4, 5.

† See p. 117.

‡ See p. 118.

pectation of hearing any such report or proceeding, when he went to the vestry on that day." Mr. Depeyster's conjecture as to the purpose for which the committee was appointed, was not only very natural from the silence respecting Mr. Jones, but was in fact correct: for although its title appears by the report, to have been as I have stated, "the committee on the state of the church," yet that is only a part of its description; for by referring to the documents,* we find it called "the committee to whom was referred the resolution of the vestry respecting the separation of St. George's and St. Paul's chapels, and who were appointed to take into consideration the present state of the church." This association of duties was certainly likely to lull suspicion; but still a quick-sighted man might have perceived in the very vague expression "to take into consideration the present state of the church," something more meant than met the ear. Even on that, however, a concealment was thrown; for it appears by the documents,† and by the evidence,‡ which brings all the resolutions into one view, that the resolution appointing the committee, directed them to confer with the rector and assistant rector upon such matters respecting the present situation of the church, as they shall judge proper. The manner in which this reference to the rector and assistant rector, was calculated to mask any attack on Mr. Jones, will clearly appear, when the arbitrators are made acquainted with the whole of that report, which they have never yet seen, and which has been mutilated in the documents. It is to be found by referring to the evidence,§ and is in the following words:

"The committee to whom was referred the resolution of the vestry concerning the separation of St. George's and St. Paul's chapels, and who were likewise instructed to take into their consideration the state of the church, respectfully report,

* Sec p. 29.

† See p. 196.

‡ Sec p. 27.

§ See p. 196, 197, 198.

“ That on the former subject they have conferred with the committees appointed for this purpose by the congregation of St. George’s and St. Paul’s. In the course of this conference, they have stated and explained the reasons which have influenced the vestry to propose a separation, and have moreover answered, according to their best discretion, such queries as have been made by these committees, respecting the endowment of the said chapels, and concerning those matters about which information was desired. Hitherto the committee have received no definitive communication from the committee of the two chapels. Further conferences may be deemed requisite, and some time may yet be necessary to enable these congregations to form a satisfactory determination. Whenever this shall be done, no time will be lost in laying the same before the vestry.

“ On the latter subject referred to the committee, so far as the same has been examined, it has been considered under two separate heads. The first relating to the inability of the rector, and of his assistant to discharge, without help, their respective duties; and the second respecting the division, disorder, and other mischiefs which have been produced by the publication of the rev. Mr. Jones’s book, entitled, “ A Solemn Appeal to the Church.”

“ First head.—Owing to the severe affliction of the rector, it has appeared to the committee, as it has done to the rector himself, utterly impossible that he will again be able to perform his pastoral duties, they therefore recommend, in lieu of the house and compensation heretofore granted to the rector, that in future he be allowed a pension of five hundred pounds annually.

“ The rev. Dr. Beach, assistant to the rector, having signified to the vestry his desire, on account of his advanced age, to be assisted and relieved in the performance of his duties, the committee recommend, in lieu of the former compensation granted to Dr. Beach, that in future he be allowed a pension at the rate of seven hundred pounds annually; and in case he keeps a house in town, that there moreover be allowed him three hundred pounds annually, to enable him to pay the rent thereof. On the subject of additional assistance

to the clergy, the committee observe, that in the present embarrassment of the church, and whilst the proposal for the separation of St. George's and St. Paul's chapels remains undecided, it will, in their opinion, be expedient to defer any arrangement upon this subject.

“ Second head.—In respect to the disorderly state of Trinity Church and its chapels, proceeding from the misbehaviour, before alluded to, of the rev. Mr. Jones, and which became the subject of the early animadversion of the vestry, the committee are constrained to declare, that in their opinion, the peace of the church cannot be re-established, so long as the connexion between the vestry and the rev. Mr. Jones remains undissolved.

“ Two modes by which the connexion may be dissolved, have occurred to the committee:—*First*, from the nature and terms of the engagement between the vestry and the rev. Mr. Jones, there can be little doubt that the same may, for sufficient cause, at any time be dissolved by either party; it being presumed that the canons of the church do not affect contracts which had been previously made. *Second*, the thirty-second canon of the general convention, of the year 1808, relates to disagreements between ministers and their congregations or vestries, and provides for the dissolution of the connexion between them. As the committee have expressed their opinion that the connexion with Mr. Jones ought to be dissolved, it remains for the vestry solemnly to consider and determine, whether a due regard for the peace and prosperity of the church, does not require of them, without delay, to have recourse to the means provided by the canons to effect this dissolution.”

From hence it appears, that there was a subject connected with the present situation of the church, and growing out of the severe affliction of the rector, and the advanced age and infirmities of his assistant, which demanded reference to a committee, and consultations with both those persons: the mention of them, therefore, seemed to limit the vague and general expressions, “ the present situation of the church.”

This then appears, from the testimony, to be a correct statement of that transaction. On the 13th of June, there being matters relating to Trinity Church, her chapels, her rector and assistant rector, which required serious consideration, a committee is appointed for those purposes. Either accidentally or fraudulently, the resolution appointing it, is couched in vague expressions, susceptible, perhaps, by a very forced construction, of comprehending the matters relating to Mr. Jones; which, however, were not mentioned, designated, or apparently thought of at the time; and if they had then been hinted at, probably the vestry would, by an unequivocal act, have declined intermeddling with them. Very soon after this committee was appointed, and when no one, except the initiated few, thought of doing any thing respecting Mr. Jones, bishop Hobart begins to prepare his letter to the vestry which he published, as appears by its date, on the 7th of August. In that pamphlet, mostly, if not entirely composed after the "Solemn Appeal" was suppressed, and when silence was imposed on its author, as a proof of his respectful deference for the vestry, bishop Hobart pointedly unfolds to them a purpose which he had long meditated, enforces the necessity of removing Mr. Jones from Trinity Church; strongly intimates that such a measure is expected from them, and that his conscience would not allow him to throw any impediments in its way. After that pamphlet had operated on the public mind, and particularly on the members of the vestry, for about a month, uncontradicted, unrefuted, and even unnoticed by Mr. Jones, because his respect for the supposed wishes of that body restrained his pen, the committee profit by the vagueness of their title, (which, if it was intentional, was a deep device, something like diplomatic skill) and bring forward a subject, not in truth delegated to their consideration; not contemplated by the vestry on the 13th of June; and which, if it had been then touched upon, would probably have been set at rest. They produce a report, the parts of which have no relationship or connection, except in the fancy of its framer.

Desinit in piscem, mulier formosa supernic.

Its front is fair and seemly; but its end is monstrous disgusting.

In order, however, to prepare the way for that report, and to justify it when produced, discontents must be made, or found to exist in the congregation. And indeed it has been justified in the argument of this cause, by reading from the evidence, for instance, of Mr. Kemper,* that many of the members of Trinity Church declared, "they would not attend the plaintiff's preaching, and others refused to receive the elements from him at the communion of the supper, but passed on to the other officiating clergyman at the other side of the altar." In the examination which this cause has compelled me to make into ecclesiastical history, I somewhere found that the people of a city, having refused to receive a bishop rightfully set over them, the clergy of the diocese were excommunicated, for not having better instructed those under their care, in the principles of their religion. For the same reason, I really think, the ministers of Trinity Church and its chapels deserve to be severely rebuked. What! is the religion of our LORD and SAVIOUR to take its character and value among christians, from the man who preaches it, and not from the Messiah who ordained it? Are they to carry their little dirty bickerings and petty squabbles into the sanctuaries of religious worship, and refuse to listen to the word of God, because it is preached by one neither accused nor suspected of any immorality or crime; but against whom they feel a paltry animosity? But, above all, are wretched sinners, who dare only pray to have their own trespasses forgiven to them, as they forgive those that trespass against them; who are forbidden to approach the holy supper with unsearched and unchastened hearts, under pain of "eating and drinking damnation," are they to bring with them to the communion of Christ, rankling in their uncontrite spirits, all their party feelings, their senseless quarrels, and their envenomed passions? Are they to reject the blessed emblems of our Redeemer's body, and of

* See p. 211.

his blood, presented to them in his name, and by one of his ministers, and wheel round, with studied insult, to another part of the altar, that they may there eat the bread and drink the cup of damnation from the hands of a pet clergyman? And is the indulgence of such culpable, criminal and unchristian conduct, to be made the motive of the most outrageous and oppressive proceedings against an irreproachable servant of Christ?

I have said the pastors of these congregations deserve the severest reprehension for not having checked such expressions of discontent. What would be deserved if they excited it? And yet, can we avoid that conclusion, when we call to mind the frequent and unceasing visitings and conversations of certain ecclesiastics, among their parishioners, the object of which always was to exclaim against, abuse and vilify Mr. Jones. When we remember that one of our gospel ministers frequently permitted his ordained lips to be polluted with terms of the most vulgar ribaldry and abuse? This, indeed, is contradicted by bishop Hobart in his "Statement,"* but it is proved by Mr. Deppeyter,† by Mr. Henry Rogers,‡ and even by Mr. Swords.§ It is true, Mr. Henry Rogers was his bosom friend, does that, however, excuse the indelicacy, if not indecency of the expressions; and is not the pouring of them into the bosom of a friend, upon whom he could most easily work, a strong proof of the purpose to which they were directed?

But what extent of dissatisfaction was excited? we have studiously enquired from every witness who testified on this subject, and by the most rigorous examination of those who dealt very largely in generals, we could not extract a dozen names; and they very strongly confirmed Mr. Deppeyter's testimony,|| that "he did hear that two or three ladies had refused to hear the plaintiff preach," and again, that "he cannot say there was a state of uneasiness in the congregation, in relation to the said controversy, because with all the pains taken to promote it, it was confined to very few." Mrs.

* See p. 91. † See p. 117, ‡ See p. 215, 216.

§ See p. 220, 221. || See p. 119.

Startin, Mrs. Hoffman, Mrs. Ogsbury, Mrs. Mann, and some few others, were all that could be specified. What then, I ask, was the character and extent of this dissatisfaction? all the fanatics and the fools, the old men and the old women of the congregation were put into requisition; were taught to cry out, and rail, and refuse to attend religious worship; were made to excite "a small ferment," which indeed would soon subside; yet while it was working, the machinery was to be put in movement.

The report was therefore prepared and presented; but first a most respectful letter from Mr. Jones, which was unexpectedly obtruded on the vestry, was read and filed without a comment. The report appeared only to aim at separating the plaintiff from Trinity Church; but it was intended not only to be the means of doing that, but also of forcing him from the diocese at large. When the report and resolutions of the vestry were presented to bishop Moore, he sent for Dr. R. C. Moore,* and under the terror of that report and its consequences, he sought to induce Mr. Jones to resign his office of assistant minister, *and quit the city*. "Let him go to Virginia, he can be useful to the church there;" an honourable testimony, that where dissatisfaction and cabals had not been artfully excited against him, he had talents, virtues and endowments, that might make his ministry useful to the church! With Dr. Harris, in furtherance of the same object, bishop Moore had a similar conversation,† in which he sought to tempt Mr. Jones by the lure of a very handsome compensation from Trinity Church. On these conversations the opposite counsel feel themselves authorized to remark and assert that bishop Moore made proposals of arrangement, which pride prevented Mr. Jones from accepting, and which were therefore defeated. Let us enquire into the justice of this observation. Dr. Harris on behalf of Mr. Jones‡ "replied to bishop Moore, that he was authorized to say for the plaintiff, that he was ready to pay a respectful attention to any honourable terms that the vestry of Trinity Church had to propose to

* See p. 153—154. † See p. 128—129. ‡ See p. 139.

him; but he would not consent to any condition that would leave a stigma on his character." What then, is this culpable and offensive pride? forsooth, that a minister of the gospel, who was ready to pay a respectful attention to any honourable terms, would consent to no conditions which would leave a stigma on his character! Dr. R. C. Moore indeed felt indignant at the terms hinted in the conversation with him,* and did not hesitate to make his feelings perfectly understood. He however communicated the proposal to Mr. Jones, whose conduct appears by Dr. Moore's letter to bishop Moore,† "he observed that he is ready to receive any proposals from the corporation over which you preside, which in the estimation of christians can be thought equitable and consistent; but refuses in the most explicit terms, to bind himself to leave his native city, or the diocese in which he resides." Here then Mr. Jones makes an offer of entering into an arrangement on the apparent subject of the report and resolution of the vestry, namely, a separation from Trinity Church, and only makes in his favour an exception having no connection with that apparent subject, that he will not bind himself to leave the city or the diocese. That exception is acceded to by bishop Moore: in his note‡ to Dr. Moore, he says he was misunderstood, and that leaving the diocese was not a condition required: Dr. Moore immediately closes with him, and expresses his hope that matters can be so adjusted as to restore to the church that tranquillity of which it was deprived. The only objection on Mr. Jones's part being removed, he was ready to listen to any honourable proposals, and enter into the discussion of any arrangement: *None was ever made, no proposals were ever offered, nor any further step ever taken.* And why? Because the ground of quitting the diocese was abandoned by the bishop: because the real object for which the proceedings had been instituted, was relinquished, either from the ignorance or integrity of bishop Moore. But as that false step had been taken, what advantage could be gained from adverse proceedings by the vestry, rather than by proposals of settlement; those proceedings

* See p. 154.

† See p. 163.

‡ See p. 164.

only going to break the connexion of plaintiff with Trinity Church? shall I answer, although the tempting offer of very handsome compensation from the vestry, had failed to allure Mr. Jones from his determination of not stipulating to leave the diocese; yet when the proceedings before the presbyters were consummated, the smallness of the compensation to be awarded, might give another hold on him, and compel him, as a commutation for beggary and ruin, to consent to leave the diocese! For this reason no offer of arrangement was ever made; no farther steps towards a settlement were taken; and the resolution of the vestry was followed up by the proceedings under the 32d canon.

That canon is to be found in the documents.* It has been so often read, that I need not trouble the arbitrators with it, but I shall make it the text of much of my remaining argument. It provides for a mode of dissolving the connection between ministers and their congregations, without any imputation of misconduct on the former. In adopting this principle of separation, it manifestly departs from the spirit of the 29th canon, to be found in the documents.† “But it is to be understood, that this church designs not to express any approbation of any laws or usages which make the station of a minister dependant on any thing else than his own soundness in the faith and worthy conduct. On the contrary, the church trusts that every regulation in contrariety to this, will be in due time reconsidered, and that there will be removed all hindrances to such reasonable discipline as appears to have belonged to the churches of the most acknowledged orthodoxy and respectability.” This is the true discipline of the church; the established doctrine is and ought to be, that the tenure of the minister’s settlement shall depend upon nothing but the soundness of his doctrine, and the piety of his life. I do not pretend to much research or learning on this subject; but as far as they extend, there is not a canon similar to the 32d, in those of any other church. Extreme cases may arise, and therefore the provision, although unique may be proper. Necess

* See p. 21.

† See p. 18.

city may perhaps justify, but certainly nothing short of extreme necessity can justify the departure from the true principles of a minister's settlement, as laid down in the 29th canon. Care should therefore be always taken, that the 32d canon should never be applied except in extreme cases. It should be construed in subordination to the general and laudable rule of the canon law, that a pastor's station shall depend upon the soundness of his faith and his worthy conduct. It is impossible therefore to suppose that a canon made for extreme and irremediable cases, can be applicable to trifling disputes, and party altercations, which patience, forbearance, and even time itself may bring to an amicable conclusion.

The next observation I shall make, is, that as this canon is a deviation from the previously and correctly settled rule of church discipline, it should not be considered as affecting contracts previously made, (as that of Mr. Jones with Trinity Church) and in which the minister accepted his settlement, not only under an express agreement, but also under the established law, that the permanency of his station was to depend on nothing but the purity of his doctrine and life. Our adversaries seem to treat the argument, that the application of this canon to Mr. Jones's connexion with Trinity Church, would be *ex post facto*, as very frivolous. I deem it otherwise; but if it should be thought weak, I must say in excuse, we have borrowed it (and it is the only argument we have borrowed) from Mr. Jones's enemies. The committee of the vestry, in their second report,* alluding to a provision in the 30th canon,† that a minister, regularly instituted or settled in a parish or church, shall not be dismissed without the concurrence of the ecclesiastical authority, assert, that it would not operate on the engagement between the vestry and Mr. Jones; but that the same might, for sufficient cause, at any time be dissolved by either party; and the reason assigned for that opinion is, "that the canons of the church do not affect contracts which had been previously made." The committee having established this position, and drawn from it a conclusion

* See p. 5.

† See p. 20.

against the applicability of the 30th canon to the engagement between the vestry and Mr. Jones; by an unaccountable confusion of ideas, lose sight of their own position, and apply to the very same engagement the 32d canon, which was also enacted long subsequent to that engagement! The reasoning of the vestry, then is this: when it is our wish to annul an engagement, the 30th canon ought not to be considered as creating any impediment, *because the canons of the church do not affect contracts which had been previously made*: when it is our wish to have our engagement annulled, the 32d canon may be used for that purpose, *because the canons of the church do and may affect contracts which had been previously made*! Between these contradictions, I may be permitted to elect, and as I adopt the doctrine, that the canons of the church do not affect previously made contracts; for the defence of my opinion, I turn my adversaries over to its original propounder, Mr. King, and am content to leave them in much abler hands than mine.

In considering the 32d canon itself, and discussing its applicability to Mr. Jones's case, the first part of it I shall notice as furnishing an objection, is the paragraph towards the end, "this canon shall not be obligatory upon the church, in those states or dioceses, with whose usages, laws or charters it interferes." Permit me to ask the arbitrators, as a preliminary question, Could the canon (even if it had been so intended) interfere with, or control the municipal *laws* or *charters* of any state or church? Most unquestionably it could not. What then was a very natural object for this clause? To point out to clergymen, who too often think their clerical characters and their ecclesiastical regulations independent of civil authority, that both are to be subordinate to the laws and charters, which are of civil origin. The *usages* of states and dioceses are also included in the exception, because, this canon being an invasion of the general principle of church discipline, there was neither a necessity, nor a wish to introduce it into any state or diocese, where usages, confirmatory of the approved general rule, had become familiar and established. Indeed, it is perfectly obvious, that this canon was not intended to apply in any case or circumstance,

where any thing more was opposed to it, than the general principle expressed in the 29th canon. The learned counsel, on the other side, observing upon this paragraph, truly say, that the word "church" has two meanings; one, an assemblage of congregations bound together by an identity of religious tenets, rules and government; the other, a particular congregation, having a place of worship: they further say, that in this paragraph it is used in the first sense, as connected with states and dioceses; and therefore, the "usages, laws and charters," alluded to, must be those of states and dioceses, and not of individual churches. I confess I am at a loss to understand what is meant by the *charter of a state or diocese*; I know of no such thing; nor do I believe charter means any thing but the incorporating instrument of an individual religious congregation. There is, then, in this sentence, an ambiguity, arising from an effort at conciseness, and not uncommon, where a word is used that has two meanings—it is used in the same sentence, and at the same time, in both meanings.

Brevis esse laboro;
Obscurus fio.

The true construction is, the canon shall not be obligatory upon *the assemblage of congregations* in those states or dioceses, with whose usages or laws it interferes; nor upon *the individual congregation*, with whose charter it interferes. This is the only rational construction of which the sentence is susceptible.

Does this canon then interfere with the charter of Trinity Church? It most unquestionably does. It provides means for removing rectors and assistant rectors, which offices, in Trinity Church, are held for life under that charter. To them, therefore, it certainly cannot apply. And, moreover, the assistant ministers being, by their contracts, (as I shall hereafter show,) to hold on the same tenure as the assistant rector, they are entitled to the same benefit with him, of an exception from the operation of the canon. But it is unnecessary to resort to this last observation; for the general

description used in the canon, may in every case be supplied by inserting the name of the church with whose charter it interferes; and as it undoubtedly interferes with the charter of Trinity Church, in at least two most important cases—those of rector and assistant rector, the passage may, for the purpose of this argument, be read thus; this canon shall have no application to Trinity Church, in New-York; of course, to no controversy between its vestry and an assistant minister. But it is asked, is not this a grievous situation? I answer, unhesitatingly, no. Trinity Church remains only under the general and correct principle of our church discipline, which ought to be preserved inviolate in every case, but one of extreme necessity. She holds her extraordinary wealth and power under a charter, which renders the application of the canon, to two of her clergymen, *legally impracticable*: she surely will not object to keep that charter *cum onere*. And as to the assistant ministers, they have been chosen by the vestry, with full reference to the charter tenure of their regular clergymen; the vestry, then, cannot complain of the immunity they have voluntarily conferred, and which is conformable to the long established church discipline. Indeed, I think, it will irresistibly occur to the arbitrators, that whatever may be the construction of the paragraph in question, or if it never existed, the arguments and observations I have been offering, would still retain conclusive force, in consequence of the laws of the land operating on the charter of Trinity Church, and the contracts of its vestry; and even in that point of view, present an insurmountable barrier against the application of this canon to their supposed controversy with Mr. Jones.

The next objection against the applicability of this canon to the plaintiff's case, is one which I have endeavoured, by frequent interruptions, to place clearly before my adversaries; but, either from its subtlety or strength, they could not or would not understand it. It arises from a comparison of the first clause, which speaks of controversies between ministers, *who hold rectorships* of churches or parishes, and the *vestry or congregation* of such churches or parishes, with the last clause, which says, the canon shall apply also to the

cases of *associated rectors and assistant ministers, and their congregations*; totally omitting here any mention of *vestries*. From this comparison we infer, that no proceedings under this canon can be had against an *assistant minister*, in consequence of any controversy with, or application by a *vestry*: and I hope to prove the position by the most satisfactory arguments. In the outset, permit me again to remind the arbitrators, that the canon is in all its parts a departure from that pure spirit of reasonable discipline, which is so highly valued, that the church trusts, every regulation in contrariety to it, will be in due time reconsidered, and that all hindrances to it will be removed. On the most obvious principles of construction, then, the canon ought not to be applied to any case, not unequivocally included in its very words; and, where a doubt of its applicability exists, the general and approved rule, which has belonged to the churches of the most acknowledged orthodoxy and respectability, ought to prevail. This argument would, I think, be conclusive, even if it were possible to suppose that the omission of the words, *or vestries*, was accidental: but if I can convince the arbitrators that it was intentional, there cannot exist any motive or authority for supplying it, by a latitude of construction. A few observations will make that intention manifest.

If it were designed to put associated rectors and assistant ministers on the same footing with the rectors of churches or parishes, it would have been naturally and effectually done, by omitting the words in the commencement, "who now, or may hereafter hold the rectorship:" the sentence would then have run thus, "In cases of controversy between ministers of churches or parishes, and the vestry or congregation of such churches or parishes, which controversies," &c. This would have included every kind of minister under one rule; and the departure from this mode of expression, by interpolating the description of one particular class, shows that the rule which was applicable to that class, was not considered applicable to the other classes of ministers. Even if the canon had been originally drafted for rectors only, or

in forgetfulness of associated rectors and assistant ministers, and that it was thought necessary to introduce them, and subject them to the like regulations as had been previously contemplated for rectors, the clumsy device of introducing three lines at the end, instead of erasing less than one line at the beginning of the canon, would never have been resorted to; or if it were resorted to, the laborious penman would have carefully compared his three additional lines, with those already written and relating to the same matter, so as to include all the provisions and contingencies of the former. Rectors, associated rectors, and assistant ministers were studiously separated, because a different and more complex provision was intended to be made for rectors than for the others: that more complex provision was first described, and then the more simple regulation for associated rectors and assistant ministers was speedily and satisfactorily made, by reference to the former provision, and by omitting what created the complexity. Why is a more complex provision necessary for rectors? Because they stand in two relations, as a part of the religious *corporation* they have a relation to the vestry, as pastors they have a relation to the congregation. They necessarily and properly come in contact with both bodies in different capacities, and may therefore have a controversy with either: an associated rector or assistant minister, where he is no part of the corporation, can properly have no contact with the vestry, out of which a controversy might arise; being only a pastor, his controversy, if he has any connected with the discharge of his duties, can only be with the congregation. As to assistant ministers, this is perfectly clear and universally true; as to associated rectors, in some cases it may be said, they are corporate officers, as for instance, in Trinity Church itself. Where they are so, it is under charters, laws, or usages that existed prior to this canon, therefore they are there, I presume, officers for life, and under the argument I have already offered, to them the canon does not in any event apply. The associated rectors meant in this paragraph, and these joined with assistant ministers, are such as are not charter officers. Besides the office was very

rare, very disagreeable to the general conventions, and one which they wished to abrogate, by treating and considering those holding it, as assistant ministers. Bishop Hobart in his letter to the vestry, has inserted the sheet of accusations which he prepared against Mr. Feltus, in which* he describes the office of joint or associated rector as "an *innovation* in the constitution of parochial churches, of which there is only one solitary instance (introduced under some very peculiar circumstances) in the United States, and which we believe is unnecessary, injudicious, and tending to discord and disunion." Afterwards,† he says, "the sentiment and usage of the church were against it; and the general convention at Baltimore, some years ago, unanimously passed a resolution strongly disapproving of the office, and recommending its being abrogated where it prevailed." No wonder then, if in conformity to those views, in consideration that the office is rare and useless, and looking to its being considered only on a level with that of assistant minister, the canon couples them together in the same provision.

I have said an assistant minister can have no contact with a vestry, out of which such a controversy, as is contemplated by the canon, could arise; when he is once settled under a regular salary, there can properly be no differences between them, but as to the earning and payment of that salary: that difference the law of the land will settle on its own principles, and if the congregation are not dissatisfied with their assistant minister's discharge of his duties, or pastoral conduct, the vestry, as a part of the corporation, instituted only for protecting the property of the church, have no right or power to express or create any dissatisfaction respecting him, separately and distinctly from the congregation at large. The framers of the canon reasoned on the principles I submitted to the arbitrators, when observing on the first report made by a committee of the vestry of Trinity Church, respecting the publication of the "Solemn Appeal," that ves-

* *Letter to the Vestry*, page 38.

† *Ibid.* page 92.

tries had no right or duty to meddle with such matters, and had nothing to do with them.

But, it has been asked, cannot the congregation, if it have such a difference, act through the vestry? I answer no; the application must proceed from the parties themselves or either of them, under the express words of the canon. Even if such a delegation were possible, the congregation certainly should solicit the interposition of the vestry, before that body could pretend to act as their delegates or representatives. In this case, the resolutions of the vestry* claim no delegated character; but explicitly asserts that the differences exist between Mr. Jones and the vestry itself. The congregation never were consulted, either as to the existence or extent of the controversy, or as to their wishes whether any, or what measures should be pursued. They were never informed that Mr. Jones had signified his acquiescence under the expressed disapprobation, by suppressing his pamphlet. They were never consulted, how far that measure on his part would be acceptable as a satisfaction or apology. They were informed of nothing that was going on, and in my soul I believe, that after they had been correctly apprised of Mr. Jones's conduct, and of the contemplated measures of the vestry, if the opportunity had been given, the congregation would have manifested the most decided disapprobation of making any further attempts against him. At any rate, the conduct pursued by the vestry of Trinity Church, and the claims asserted on its behalf, warrant the observation, that if it could proceed under the canon as it has done, and without consulting the congregation, it might dissolve the connexion between an assistant minister and the congregation, against the wishes of both. There is then this radical vice in the proceedings, that the parties to the controversy, are not the parties designated in the canon.

The controversy which comes within its purview, must also exist *between* the minister as one party, and the vestry or congregation as another integral party: it cannot be be-

* See pages 5, 8.

between the different members of the congregation disputing among themselves; such a dispute or controversy as that, can never form any ground for applying the canon against the minister. What was the case here? The controversy, if any, was between the different members of the congregation, some strongly supporting and others opposing Mr. Jones. Take to this point the evidence of their chief witness, Mr. King. In his evidence* he describes the disputes thus, "Mr. Jones *and his friends*, with activity and zeal, as I understood, endeavoured to vindicate his conduct, and represented him" (you will judge how truly) "as an injured and persecuted man; while those who, with the vestry, disapproved of Mr. Jones's conduct, with equal zeal and activity endeavoured to establish their opinions among the parishioners: the consequence of this *disorderly condition of the congregation* had been foreseen, and the fears of the vestry were justified by the *heat, uncharitableness and division which was extending themselves throughout the parish*. The continuance of Mr. Jones as one of the assistant ministers, *in this situation of the congregation*, would, in my opinion, have given strength and permanency to this *state of disorder*; while his separation would naturally stop the further progress of the dispute, and in time re-establish the harmony that had prevailed in the congregation." What is the unvarnished meaning of this paragraph, stripped of its imposing gloss? That Mr. Jones had a great many advocates in the congregation, who considered the conduct of the vestry against him, and of those whom the vestry supported, as extremely reprehensible, and who were therefore desirous of shielding him from injury and persecution: that those were daily becoming more numerous and formidable: that while it could yet be done, Mr. Jones should be removed from his situation by his adversaries, in hopes that when he was banished, his friends might drop off, or die away; the progress of the disapprobation against the vestry and those whom it supported, might be stopped; thus, by degrees they would regain their endangered ascendancy! Mr. King again says,† "The vestry disapproved of Mr.

* See page 253.

† See page 255.

Jones's conduct, he persisted in the vindication of it.²² How in the name of heaven? *By immediately suppressing his pamphlet at the suggestion of Mr. King himself, and making that suppression known to him as a proof of his respectful deference to the opinion of the vestry!* "Observing the increase of the division and disorder of the congregation, the vestry became satisfied that *its peace* could be re-established only by the dismissal of Mr. Jones." The doctrine here contended for, is, that because many of the congregation supported Mr. Jones, he should be removed; that in proportion as the number of those who thought him right increased, in the same proportion did the necessity of his removal become more urgent; that, indeed, if every one of the congregation thought him wrong, and differed from him, the canon need not be resorted to; but that if half, or nearly half, approved of his conduct, his sacrifice was indispensable, and the controversy was exactly of the nature contemplated by the canon. I do not know that half the congregation did in fact support him; for I am ignorant how far the popularity, and probably the well earned popularity of his opponent may have injured him—but the number of those who espoused his cause, was certainly most respectable; and their number and respectability was the motive of breaking his pastoral connexion with them. I assume the position, however, of one half supporting him, to show that this cannot be such a controversy as the canon alludes to. *That* must be between the minister and the congregation, *as a body*; if it be only dispute and division in the congregation itself, the canon does not apply. This was exactly such a case: it was a mere division of opinion between the different members of the congregation, produced by the first report of the committee, as much as by the plaintiff's pamphlet; to subdue this division, the vestry, which, after the publication of that report, had no longer any controversy with him, availing itself of superior power and influence, determined to sacrifice him although he was not more productive of the division than themselves.

Again, the controversy to which the canon is applicable, must present an extreme case, which nothing but the canon can remedy. Means must be taken by conciliatory efforts,

by speaking with your neighbour at the gate of the temple, and by seeking for amicable arrangement in every reasonable way, to heal the differences which may have unfortunately arisen, before it is justifiable to apply to the bishop and his presbyters. They are only warranted to interfere, when their interference is become *indispensably necessary to restore the peace, and promote the prosperity of the church*. They can only arbitrate on a controversy, which has proceeded such lengths as to *preclude all hope* of its favourable termination. In such a case, the parties applying to the bishop, ought to be able to say, we have made propositions which we thought just and reasonable; we have done every thing in our power towards a settlement of this controversy; but all our propositions have been rejected, and all our efforts have been unavailing. Was that course pursued here? Was any thing suggested, proposed, discussed, or listened to by the vestry? Mr. Jones had, as I have already stated, on the suggestion of Mr. King, suppressed his pamphlet: finding bishop Hobart's letter to the vestry follow fast upon that suppression, and published, distributed, and sold, on the fourth of September, he addressed a letter to them also, but as a mere private communication.*

This letter, in deference to the vestry, expresses his determination to wait for the intimation of their opinion, as to the line it would be proper for him to pursue: he explicitly states that he is ready to enter upon any terms of amicable adjustment, consistent with the character of gentlemen and christians: he conscientiously declares that an entire disposition exists on his part for the removal of all difficulties, and for the adopting of any measures which their wisdom might devise, for the restoration of peace and harmony to the church. Mr. Laight, in his testimony,† thinks the vestry were induced to act against Mr. Jones in consequence of his silence: in this letter he explains his reasons for having been silent, refers to a member of the vestry, and of the former committee for the confirmation of his statement; and exculpates himself, at least, from every charge of

* See p. 26, 27.

† See p. 225.

obstinacy or disrespect. Could a stronger step than the writing of this letter, have been taken by the plaintiff, to terminate the dispute? If any decisive measures had been previously meditated against him, ought it not to have produced a pause, and to have excited the vestry to make some proposition, if for no other purpose, at least to test his sincerity? Ought it not to have been honoured with some notice? It received none. It was read immediately before the report of the second committee was made. Mr. Depeyster* asked, what order was to be taken on it; he was answered, "that it would be filed:" *it was filed*; and then, with that letter on their files, and with knowledge in the breast of Mr. King, the framer of the report, that Mr. Jones had, at his very suggestion, and to mark his deference for their opinion, suppressed his book, the report was read, and the resolutions of the vestry adopted, declaring the controversies to be of such a nature as could not be settled between them! No opportunity was given to Mr. Jones to make any further advances towards conciliation or explanation. And why? Because the vestry were determined upon having a controversy, and upon not letting it slip from them. They pursued the advice of one of my countrymen, who apprehended that a flimsy affair of honour would be too easily adjusted—"It is a very pretty quarrel as it stands, gentlemen, now don't spoil it by explanations." Yes, it was a very pretty quarrel as it stood—it just answered their views; and no explanations were permitted, lest they should spoil it.

But the opposite counsel say, Mr. Jones's own letter admits this controversy; for it expressly alludes to *the unhappy differences existing in the church*; and it laments a *difference of sentiment* in the vestry from what he felt himself compelled to entertain. To what miserable shifts must our adversaries be put, when they resort to these expressions, as proofs of an existing controversy. The *differences existing in the church*, are clearly the differences existing between the ministers of the church, which had been formally brought to the cognizance of the vestry, by bishop Hobart's letter. It will scarcely be said to have been a difference between the

* See page 118.

vestry and the plaintiff, of which the former "*had no cognizance*," before the publication of that pamphlet. Indeed, the concluding paragraph, where it speaks of burying resentments, and observing a decorous deportment, can only apply to the clerical disputes. The *difference of sentiment*, however, is with the vestry, and a difference of sentiment is surely a *difference*! Sagaciously and truly observed; but is it such a difference as imperiously demands the interposition of the bishop and his presbyters? Is every difference of opinion to dissolve the connexion between a minister and his congregation? Or, is every pastor of the church to surrender up the independence of his judgment, on every subject, to the vestry who commands his salary? Is that the reasonable discipline, which makes the station of a minister dependent on nothing but his own soundness in the faith, or worthy conduct?

In those extreme cases of controversy, which preclude all favourable hope of termination, and when the dissolution of the pastoral connexion is indispensably necessary to restore the peace, and promote the prosperity of the church, the canon enjoins, that the application shall be made to *the bishop of the diocese*, or, in one word, to *the diocesan*. As far as I know, this is the only canon, which, in speaking of a bishop, uses that marked and distinctly exclusive phrase, "*the bishop of the diocese*," and the reason, I believe to be, that the regulation, which makes the station of a minister dependent on something very different from his own soundness in the faith, or worthy conduct, is so great a departure from the reasonable discipline, that belonged to the churches of the most acknowledged orthodoxy and respectability, that it was thought fit to confine the discretionary enforcement of it to the highest existing ecclesiastical authority in the diocese. Sure I am, that the law sanctioning such a departure from the correct principles of church government, should always receive the strictest construction. Here let me reply to the charges made against us, by our adversaries, with apparent indignation, that we seek to destroy and overturn the various acts of episcopal authority performed by bishop Moore. I say, *with apparent indignation*; for they well

know that we know we have no such power; they well know we have no such views; they well know we should shrink with abhorrence, at least equal to their own, from any such atrocious efforts, to invalidate or impair the force of those sacred acts of ordination or confirmation, or of any other nature, which were done by virtue of the episcopal character. We admit all bishop Moore's rights as a bishop. We acknowledge that those acts would be valid, even if performed by a transient bishop, in the diocese, without the consent of the diocesan; although such an exercise of his functions would be, to the last degree, irregular and contrary to church discipline. To every such act, the maxim of our law applies, *fieri non debet, sed factum valet*. How much more readily do we acknowledge the incontestible validity of those acts, performed by bishop Moore, who was undoubtedly consecrated a bishop of this diocese, and made competent therein to all episcopal duties; who, though he did not obtain bishop Provoost's concurrence to the regulations by which he was to be directed, acted with his permission, and never, except in this instance, against his consent. If my client were to attempt bringing in question the validity of those acts, operating probably on every congregation in the diocese, then indeed he would merit execration from the community; but those who now seek to heap them on him, well know that such wickedness and folly are not in his head, his heart, or in his nature.

The learned counsel opposed to us, are not content with our admission, that bishop Moore is a bishop of this diocese, they insist that he is its diocesan; and, in support of this claim, rely on his undisputed exercise of diocesan powers for ten years, and on the uniform acquiescence of the clergy therein. If no other answer could be given to this argument, it would be sufficient to reply, that our church knows no such thing as a possessory title to the diocesan character—it must be clearly derived from the delegation of the competent authority; neither ten nor twenty years undisputed exercise of diocesan powers, would advance one jot towards creating a good title to them: and, as the clergy do not confer the diocesan character, so their acquiescence cannot avail in es-

establishing it. But, what was the nature of this acquiescence? Bishop Moore being competent to the discharge of all episcopal duties within the diocese, and there being no motive to excite any one to an investigation of the arrangements between him and bishop Provoost, it was supposed by my client, and by every clergyman in the diocese, that he was acting under the authority of the latter, as an assistant. The acquiescence, therefore, may be fairly attributed to ignorance and mistake. This is evident from the testimony of Mr. Ireland.

But, before I trouble the court with his testimony, let me notice the observations that have been made upon this witness. "He is a degraded clergyman," and because he is a witness in this cause, he is sarcastically called, "the bosom friend of Mr. Jones, who was one of his accusers, and assisted in bringing him to the trial which caused his degradation." This bosom friendship is not proved; nor is it true: but this is true—that although Mr. Jones was one of the accusers of Mr. Ireland, he was shocked and mortified at the outrageous sentence of the presbyters. It is true, that one of those quarrels excited with him by his reverend brethren, arose from this, that he would not, by any word or act, appear to approve of its disproportionate severity; and would not join in a combination to prevent a reversal of those proceedings.

I cannot deny that Mr. Ireland is a degraded clergyman. In the warmth of passion he raised his hand in a menacing position, and gave the lie to one of the vestry. And he was also convicted of meddling with matters of money, in a way very common among merchants, but not to be permitted to a minister of the gospel. These were his offences; but such as they are, no man has ever dared to question his veracity. He is a man, (and perhaps it has contributed to his downfall,) whose talents and learning would have placed him in the foremost ranks of any literary profession to which he belonged. His pamphlet has been called a disgrace to the language in which it is written. This is one of those exaggerated expressions in which our adversaries frequently indulge; such as the "offence of the highest nature against

the church: but it has no meaning, except to show the soreness which is felt under the sarcastic severity of his remarks. He has not spared those, who, when they had the opportunity, did not spare him. So far as that pamphlet discusses the subject I am now considering, though short in compass, it is conclusive in argument; and it cannot be attentively read, without affording the most satisfactory information. I now return to his testimony, and to the immediate subjects in discussion.

Mr. Ireland states,* "that he has never had a doubt, from the time of bishop Moore's consecration to the present, that bishop Provoost was the diocesan of this diocese, but he did suppose that an arrangement had been made between bishop Provoost and bishop Moore, by which bishop Provoost delegated to bishop Moore the authority under which he acted." And Dr. Harris† says, "that when he attended, as a member of the house of clerical and lay deputies, the consecration of bishop Moore, and signed his testimonials, he did it on the ground that bishop Moore was thereby made an assistant, or coadjutor bishop, and he verily believes that such was the understanding of the other members of that convention." So Dr. R. C. Moore‡ testifies, that "he has always considered bishop Provoost as the diocesan, since his consecration; but did not suppose that he would have acted after the consecration of bishop Moore as a coadjutor bishop; but this deponent always thought that bishop Provoost had the right of acting under the minutes of the house of bishops." And, again, "the deponent always considered the acts of bishop Moore as valid, unless controlled by bishop Provoost:" and in another place, he says, that he "has always, since he first saw the minutes of the house of bishops, appointing bishop Moore, considered him only as a coadjutor bishop, and he has frequently expressed this opinion to other episcopal clergymen, and has never heard it controverted; but the deponent never thought that bishop Provoost would have acted after the appointment of bishop Moore, though he considered him as having the right to do so, if he thought fit." Indeed,

* See p. 121, 125.

† See p. 133.

‡ See p. 125.

the generally received opinion that bishop Moore was no more than an assistant, until the heat of the present controversy had generated new paradoxes, is most strongly evidenced by what took place at the special state convention, in May, 1811, and testified to by several witnesses; but I shall content myself by referring to Dr. Harris.*

“The deponent was a member of the special state convention, in May, 1811, when Dr. Hobart was elected, and remembers to have heard Mr. Harison make a motion in that body, that the person then to be elected bishop, should, on the death of bishop Moore, succeed him as diocesan of the state; upon which, Dr. Moore observed, that would be going further than they had power to do; for that bishop Provoost was the diocesan, and appealed to Dr. Beach, who was then in the chair, whether or not he was correct in his opinion, who decided that he was. Mr. Harison then changed the form of his motion, that the person to be elected should succeed to the place of bishop Moore, in case he should survive him. That Dr. Beach was president of the house of clerical and lay deputies, in 1801, when bishop Moore was consecrated.” The acquiescence then of the clergy of the diocese, and among others, of the plaintiff, was no more than this, that bishop Moore being, as assistant bishop, competent to all the episcopal acts, and, therefore, no necessity or interest prompting to a particular enquiry as to his arrangements with bishop Provoost, whose intention of not further acting was well known; it was taken for granted, without enquiry, that all proper delegation of authority had been given; and his clergy acted with him, believing that he had, and, as if he had plenary powers. If any acquiescence on their part could affect the question, who was in fact the diocesan, this undoubtedly is not of such a cast: that question must therefore be decided on its own merits.

In entering upon the discussion of this point, permit me, with respect, to remark upon a difficulty, which we have always felt; but to which we have voluntarily and cheerfully submitted. The scheme of church government for which

* See p. 133.

our adversaries would have to contend, we foresaw would be more congenial than ours, to the habits and already formed opinions of those whom we were to address. To arbitrators themselves, presbyterians in principle, arguments derived from the sacred character of episcopacy could not, it might seem, be urged with any reasonable prospect of exciting conviction—in truth the more the divinity of that character was to be cast into shade, and the more it was to be made appear a mere human institution, subject to human regulation and control, the more, we were aware, would the arguments present to their eyes, the appearance of sound and correct reasoning. But even under the sense of that disadvantage, we felt encouraged and assured by another reflection; that our judges were men, whose minds were habituated by their former professional practice, and their present judicial stations, to divest themselves of the peculiarities of their own private sentiments, and to enter with strong and penetrating research into topics of discussion growing out of almost every profession and occupation of life, with the views and reasoning, in each case, adapted to that particular profession or occupation, and which ought to regulate the litigant parties themselves. We were confident, they would feel, that this being a dispute between episcopalians, must be decided upon strict episcopalian principles; that they would examine into those principles from the most approved sources, and decide upon them, without suffering their minds to be in the least affected by any real or apparent coincidence between the tenets of either party, and those sanctioned by their own private approbation. I shall therefore bring forward and urge the doctrines of our church, as if they were implicitly received by those whom I address. I shall speak to you as episcopalians, because you must, for the time, think and reason as episcopalians, to form a correct judgment in this episcopalian controversy.

Bishop Provoost, having been for many years unquestionably the diocesan, must continue so, unless by some competent power he be divested of that authority. This, it is contended was done by his resignation. Hence arises the question, can a bishop resign. With that I shall connect another, which, as to the present case, may be considered nearly sy-

nonymous; namely, can he divest himself of that authority, by his own mere act of resignation, independent of its acceptance by any competent body. This last question, I state in consequence of what fell from one of the arbitrators during the argument of the opposite counsel. A suggestion was made, that probably no one would dispute the fact of bishop Provoost's resignation's being accepted by the state convention, if they were competent to accept it; I then mentioned that bishop Hobart disputed it, and that I meant to dispute it also. The fact is, bishop Hobart contends that the state convention did not accept it, and had nothing to do with either acceptance, or refusal to accept—that bishop Provoost's diocesan character was completely divested by the exertion of his own will in resigning, independently of the assent or dissent of the state convention, or of any other body, none having any election or authority to resist or control that will. These opinions are I think very explicitly maintained in the following passages extracted from his pamphlet entitled, *a Statement addressed to the Episcopalians, &c.* In pages 6 and 9 he says, “ bishop Provoost, violating no law of the church, *resigned* his episcopal jurisdiction to the convention of the protestant episcopal church in the state of New-York, from whom he received it.”

“ The convention, contravening no law of the church, *acted upon his resignation, considered him no longer as bishop of the diocese*, and elected Dr. Moore to be diocesan bishop in the place of bishop Provoost.” Again, in page 23 he undertakes in terms scarcely commendable, to accuse Mr. Jones of intentional falsehood, because he said in his pamphlet that bishop Provoost *tendered his resignation*: this he contends is gross perversion, because bishop Provoost *resigned* his episcopal jurisdiction. Now, the difference between *resigning* and *tendering a resignation* can only be this, that resignation is an act in itself consummated and complete, which neither wants nor can receive any validity or sanction from the acceptance of another, nor be invalidated or impaired by any dissent or refusal to accept: but a resignation which requires such acceptance to make it effectual, can only *be tendered* by the party from whom it originates. If the au-

thor then wished in this paragraph, to do more than indulge in a very acrimonious and offensive stile of controversy, he meant to say that the expression "*tendered his resignation*" was incorrect, inasmuch as the resignation of bishop Provoost was a complete and consummated act, the moment it proceeded from himself; and neither required, nor was susceptible of receiving validity or sanction from acceptance by the convention; nor of being affected or controlled by their dissent. Indeed he does not leave this position to rest on mere inference; for after having very triumphantly stated bishop Provoost's letter to bishop White, as president of the house of bishops, in which are the words, "I resigned at the late meeting of our church convention, my jurisdiction as bishop of the protestant episcopal church in the state of New-York," he proceeds "the matter then *was settled*, bishop Provoost *resigned* his episcopal jurisdiction to the convention of the church in this state. And *the convention had nothing to do* but to appoint a successor, or leave the diocese destitute of a bishop. *His jurisdiction over the church in this state then ceased*," &c. In page 24 he further enforces the same position; he says that bishop Provoost, "*in consequence of his resignation, ceased to have any episcopal jurisdiction in this diocese*," and speaking of the state convention, he says, "they had indeed no alternative. Bishop Provoost did not ask *permission* to resign; did not tender his resignation, he *resigned* unequivocally, decisively resigned, and immediately left the convention;" and again, p. 25, "The convention *considered* his resignation as complete and effectual."

The doctrine then of bishop Hobart at least, is that bishop Provoost had a right to resign; that the mere exercise and expression of his own will, made a complete and perfect act of resignation, by force of which he instantly ceased to have any episcopal jurisdiction in the diocese; and that the state convention had neither the power of accepting nor of preventing or refusing the resignation; and to this must of necessity be added, that no other body had the power of accepting, refusing, or at all controlling that perfect and rightful act of resignation. Are these opinions consonant to the pure doctrines of our church? Can a bishop resign?

I do not pretend to be versed in ecclesiastical authorities, or in the history of our church governments. I have therefore reposed myself upon the house of bishops, who *declared*, not *made the law*, for it is a tenet of our church that the law on this subject comes from God. I have confided in their exposition of the principles regulating the divine institution of episcopacy, which they expressed in their message to the house of clerical and lay deputies,* “that the contemplated resignation was not consistent with ecclesiastical order, or with the practice of episcopal churches in any ages, or with the tenor of the office of consecration.” And I confess I have always thought that when the highest authority in our church had spoken an opinion so clear and pointed, it was scarcely permitted to those who professed to reverence and obey it, to treat that opinion with the most practical contempt, and set it entirely at naught. I scarcely expected, after that supreme and venerable body had expressly and solemnly declared their collective opinion, that the resignation was not “*consistent with ecclesiastical order, or with the practice of episcopal churches in any age, or with the tenor of the office of consecration,*” to hear it uncerimoniously, if not disrespectfully asserted by a young associate, on whom the grace of consecration had been but recently shed, as is done in the “Statement,†” that “it will not for a moment be maintained that the resignation of episcopal jurisdiction violates any essential principle of episcopacy:” and also, that it is not “pretended that either the laws or the *practice* of our church were opposed to the resignation of episcopal jurisdiction, when the convention of 1801 was convened, at which bishop Provoost resigned his jurisdiction.” What! was not that which was inconsistent with ecclesiastical order, contrary to the laws of our church? was not that which was inconsistent with the practice of episcopal churches in all ages, contrary to the practice of our church? or was the subterfuge resorted to, that it was not opposed by the practice of our individual church; because, having been instituted only a few years before, it *had no practice at all*?

* See p. 40.

† See page 22.

And does not an act which is inconsistent with the tenor of the office of consecration, violate any essential principles of episcopacy? Where are those essential principles to be found and learned? are none of them to be found in the office of consecration? is every thing that violates no canon consistent with the essential principles of episcopacy? I suppose that to be the meaning of bishop Hobart, when he says that bishop Provoost's resignation "violated no law of the church;" as it undoubtedly is of the opposite counsel, who expressly contend for his right to resign, because there is no canon against it. The laws which regulate the rights and duties of bishops, were antecedent to any canon of any church, and are derived from a far different source. A canon is a mere temporal regulation of human institution, and being the act of an ecclesiastical legislature, may be compared to a statute: the "essential principles of episcopacy" are, if I may say so, a part of the common law in our church, growing out of the sacred character of the institution, to be learned from the scriptures, from the apostolic practice, from the history of the primitive churches, and from ecclesiastical writers of approved authority. They were imparted to us from the church of England, which received them through the Catholic church; and to that they were given, as we are taught, by the divine author of religion. To those authoritative sources of information then, we must apply ourselves, and not to any petty canon of yesterday, in order to ascertain whether bishop Provoost's resignation was consistent with the essential principles of episcopacy, and violated no law of the church.

Bishops are considered by us to derive their jurisdiction and authority in succession from the apostles, and by the command of our Saviour. "As my Father sent me, so send I you; and lo I am with you always, even unto the end of the world." Through them is continued to the christian church (as we believe) the discharge of those duties commanded by him, and which he promised to sanctify with his divine presence, "always, even unto the end of the world." They are, in fine, to us, what the apostles were to the first christians. We cannot therefore, better test what a bishop may do than by considering what an apostle might have done. Let

me then ask, could one of those Selected Twelve, whom his Lord and Master had ordained to preach and to baptize, in the name of the Father, and of the Son, and of the Holy Ghost—to go forth among the Gentiles, to convert and to save—whom he enjoined to suffer all privations, to encounter all difficulties, to face all perils, and never to remit his labours, until in the fulness of time they should be ended and rewarded by a crown of martyrdom. Could he have said, I am weary of holding Christ's divine commission, and I'll throw it up.—I am tired of preaching the gospel among the heathen, of inculcating its inspired doctrines and precepts, of opening to untaught and unbelieving minds, the mysterious truths of our Saviour's sacrifice, and our own redemption. I'll stop and be at rest? And if he could not resign the office conferred on him by his Lord and Master, how can one of those, who by the same divine command has succeeded to his duties, and, if necessary, to his toils, his pains, his troubles, his dangers, and even to his martyrdom? No, if the divine nature of episcopacy is not to be treated as a pretence of priest-craft, a bishop who holds by apostolic succession, cannot free himself from the discharge of those duties, to which he was ordained by consecration and devoted himself by his consecration vows. Nor is his office to become a mere sinecure, an idle and empty title. As no one ever heard of an *emeritus* apostle, so I cannot without necessity admit of an *emeritus* bishop. While God continues to him his bounties and his blessings, while he vouchsafes to his servant a competent share of health, strength and faculties, they are to be employed in fulfilling those sacred duties, to which he has been appointed by divine institution, and to which he bound himself by accepting the holy office. A resignation consistent with the continued discharge of those duties, such as the surrender of one diocese by a bishop, whom superior authority has thought fit to translate to and place in another diocese, is indeed now universally allowed, although even *its* propriety has been doubted by many. Cases may also exist, in which from the failure of the frame, from the decay of the physical or the mental powers, a remission of those laborious duties, or even a resignation may be permitted; and some such instances, grounded on ex-

trene necessity, may perhaps be found in church history: of that necessity however, a competent superior ecclesiastical authority must judge, and without its approbation and express permission, no consecrated successor of the apostles can withdraw himself from the active discharge of his episcopal labours: he cannot of his own free will, throw up his superintendence and authority over that portion of the christian church committed, under a sacred ordinance, to his special care, and become a bishop of *the church at large*, without any peculiar jurisdiction; although retaining a competency to the performance of episcopal acts. It was not to that he was consecrated or appointed; he would no longer be a true successor to the apostolic labourers, and would only enjoy an honorary and very useless title, founded on the abandonment of his duties. In a certain sense it may be true, as asserted by bishop Hobart,* that "the connection of a bishop with a particular district is a matter of mere human regulation," but it is essential to the utility of the institution itself, and conformable to the practice of the apostles themselves after the christian church became diffused and necessarily subdivided, that every bishop shall always be connected with and have jurisdiction and government over some particular district: As a general, if not an universal position, therefore, I beg leave respectfully to adopt that laid down by the house of bishops, that a resignation by which a bishop would free himself from all connexion with any particular district whatsoever, and make himself a mere bishop at large, without an appropriate jurisdiction, is not consistent with ecclesiastical order, or with the practice of episcopal churches in any age, or with the tenor of the office of consecration; and most explicitly to deny the doctrine deducible from, if not expressly contained in bishop Hobart's "Statement," that such a resignation neither violates any law or practice of our church, nor any essential principle of episcopacy: and that a bishop can divest himself of his episcopal jurisdiction, or exonerate himself from any part of his duties by his own mere act of resignation, independently of the assent or dissent of any other body, none having any election or authority to resist or control his will.

* *Statement*, p. 22.

It must, however, be admitted, that this very unsound and untenable doctrine was not brought forward and supported before you in its full extent; for feeling and acknowledging the necessity of an acceptance to make the resignation complete and effectual, the opposite counsel contended that bishop Provoost's resignation was accepted by the state convention—and on this question of fact, they have again separated themselves from their fellow labourer in the same vineyard, bishop Hobart; he contends that there was no acceptance, and his testimony, on this fact, is the more important, as he was an active member of that convention, and had the best opportunities of knowing the views and intention of that body. Before I refer to his account of what was done by the state convention, permit me to premise an observation, the correctness of which is, I think, manifest. Acceptance, to operate in completing and confirming a resignation, must be a voluntary act, done with the intention of confirmation, and under the knowledge, that the party accepting had the right, if it thought fit, to reject the resignation. Nothing done in ignorance of the right to refuse assent; or, under the idea of possessing no option, and of being obliged to act in a certain way, can give to the resignation any sanction or validity. Precisely of this last description, however, were the acts of the state convention. Bishop Hobart, in his "Statement,"* says, "the convention *considered his resignation as complete and effectual*;" and he asks, "what stronger proof could there be, that the convention *considered the episcopal office vacant*, than their resolving to proceed to the election of a suitable person, to be recommended for consecration, as bishop of the protestant episcopal church in the state of New-York, and afterwards electing Dr. Moore for that station." In the same page, he again uses nearly the same phraseology—"the convention then, after the resignation of bishop Provoost, *considered the church as destitute of a bishop*, and they *proceeded to fill the vacancy in the bishopric*." And again, in page 6, "This convention, contravening no law of the church, *acted upon his resignation, consi-*

* See p. 25.

dered him as no longer bishop of the diocese, and elected Dr. Moore, to be diocesan bishop in the place of bishop Provoost." Now, let me ask, what is the meaning of the expressions, "considered his resignation as complete and effectual;" "considered the episcopal office vacant;" "proceeded to fill the vacancy in the bishopric;" and "acted upon his resignation?" Are they not intended very unequivocally to mark, that the convention considered the vacancy as completed by an act over which they had no control, and which they had no option to reject or invalidate; or, to use his own words, that "*they had indeed no alternative;*" they "*had nothing to do but to appoint a successor, or leave the diocese destitute of a bishop?*" This testimony of bishop Hobart accords exactly with the proceedings of the convention, to be found in the documents.* The journal states as a fact, that bishop Provoost resigned his episcopal jurisdiction: on that, no resolution was taken or proposed to accept or reject his resignation; but, it having, in their opinion, altered the situation of the church, a committee was appointed to consider, and report the measures to be pursued in that altered situation: the committee made a report, in which it was not pretended that they accepted the resignation, or that their acceptance was necessary; on the contrary, they put the validity of the resignation entirely on bishop Provoost's own act. "The right rev. Samuel Provoost, D. D." (omitting even the title *bishop*,) "*having declared that he resigned,*" &c. "The convention return their thanks to the bishop, and whilst *they regret* that he should have *judged himself* under the necessity of quitting, so suddenly, the exercise of the episcopal office," &c. A resolution having been proposed, containing a very unwarrantable assumption of power, which might have been supposed to imply an assertion, that the right of conferring the office of bishop, and therefore, of accepting the resignation, was in the convention, by the words, "*choosing a suitable person to be consecrated as a bishop, and to have the charge of the protestant episcopal church in the state of New-York,*" the resolution

* See p. 37, 38.

was rejected, and a less objectionable one adopted, only speaking of "the election of a suitable person, *to be recommended for consecration*, as bishop of the protestant episcopal church in this state." Indeed, the convention seem to have very clearly and correctly felt, that whether bishop Provoost's resignation was good or not, was a matter of which they had no cognizance. If any ecclesiastical body had a right to accept or reject it, they were not that body, and they therefore carefully abstained from any expression or act, susceptible of being considered as an assumption or exercise of any such power.

It is now, however, contended before the arbitrators, not only that the state convention accepted the resignation, but that they were the body rightfully authorized to receive and accept it. My learned friend who spoke last, has chiefly urged this doctrine, and has sought to support it by metaphysical arguments, in which he has eminently displayed the art and subtlety of a lawyer, but not the tenets or principles of an episcopalian. I do not mean to say that he is not one, but his reasoning is of a cast and character, perhaps, not injudiciously calculated to be more favourably received by those to whom it was immediately addressed. All the authorities which I read to the arbitrators a few days since,* put it beyond a doubt, that the resignation must be made to, and accepted by his metropolitan, before it can have any effect. This position having been incontrovertibly established, the opposite counsel has sought to surmount the difficulty it creates, by attempting to maintain that the state convention is the metropolitan. A metropolitan, consisting of ecclesiastics, none of whom was ever consecrated or vested with episcopal powers; and of lay deputies, none of whom was ever ordained! May I be permitted, with the utmost respect

* *Vide from p. 270 to 273; and also 3 Burn's Ecclesiastical Law, title resignation; and 1 Blackstone's Commentaries, p. 382: (both of which expressly say, that "all resignations must be made to some superior, and that, therefore, a bishop must resign to his metropolitan,") which were, by mistake, omitted to be mentioned among the authorities in the proper place,*

for those before whom I speak, to call it a *presbyterian episcopacy*, and something savouring of a new sect. It is not to be found in the religion of my fathers, nor in that, into which I was born by baptism. Assuredly, the stream of my learned friend's episcopal opinions, has flowed through other waters; it may seem clear to the view, but it is mixed and brackish.

Let me examine the nature of this doctrine, that the state convention is the metropolitan. What is a metropolitan? Precisely an archbishop. And are the lay delegates archbishops, or component parts of an arch-bishop? According to the tenets of our church, can any number of unordained and unconsecrated persons, coming together in consequence of election by congregations, be competent to discharge the sacred office, which we hold to be derived from the apostolic stock, and to be filled only by continued succession from them? Can episcopal powers and jurisdiction be conferred by any thing but the holy imposition of hands? My learned friend's elective and representative lay episcopacy may seem to harmonize with our civil government; but much as I admire in it, and in every thing of human regulation, the principles of sound democracy, yet, so long as I admit that the origin of our characteristic religious institution is not of man, I must adhere to the divine ordinance. I cannot be a republican in religion, unless I should change and turn presbyterian.

The opposite counsel, further maintain the right of the convention to accept bishop Provoost's resignation, by the following chain of reasoning: Episcopal jurisdiction over a particular diocese, is human: suppose the state were to be subdivided into several dioceses, what would become of the jurisdiction in the present bishop of the state, over the parts set off and placed under the care of other bishops? Episcopal jurisdiction then may be taken away by human means—it was conferred by the state convention; and into the same hands that gave it, may it be resigned. Every one of these positions deserves a remark. It is not correctly true, according to our tenets, that episcopal jurisdiction over a diocese, is human. The jurisdiction itself we hold to be divine; its

powers and duties we consider of that character; but the extent and limits of the diocese are of human regulation, and may therefore be modified according to our notions of policy or convenience: it may therefore be a thing of human enactment, to ascertain *the extent* of territory over which a bishop shall have jurisdiction; but it is essentially connected with ecclesiastical order, and the divine nature of the institution itself, that a bishop shall watch and preside over a particular portion of Christ's flock. I may therefore admit, that if the state were subdivided into different dioceses, the jurisdiction of the present bishop of the state would cease over the parts set off and placed under the care of other bishops; although I do not conceive that such would necessarily be the fact; for, if I am not mistaken, the bishop of the state, unless otherwise regulated by the competent authority, would then become a metropolitan with suffragan bishops, and would still retain his jurisdiction in a metropolitan form over the whole state. But it may be pertinent to the question of the powers of a state convention, to remark, that such an alteration of dioceses cannot be effected by that body, and does not fall within their powers: it must be an act of the church at large. No state convention can, by its uncontrolled act, pour an indefinite number of bishops into the house of bishops. Even then if I were to admit that episcopal jurisdiction can be taken away by human means, I should still be warranted in contending that it can never be taken away by a state convention. But the position itself requires considerable modifications. Episcopal jurisdiction can certainly be taken away, and utterly annihilated in an individual, as a punishment of crimes and offences; but this must be done by those who, although themselves human, act under a divine commission, and therein exercise a portion of their own divinely ordained jurisdiction. A particular portion of territory can also be withdrawn from a particular diocese; but that is not a destruction of episcopal jurisdiction, it is only a modification of its application, in a matter of human arrangement; and even that cannot be effected without the house of bishops, it being a part of the supreme government of the church.

But, the great error of the argument lies in the position, that the episcopal jurisdiction was conferred by the state convention. The same assertion is made by bishop Hobart in his "Statement,"* although it seems to me without any bearing on his reasoning, that the resignation was in itself complete, and required no acceptance for its consummation. If that were true, it would be very immaterial to enquire, by whom bishop Provoost was invested with his office. In the argument of the opposite counsel, however, the error of this position forms a fatal defect. The state convention gives nothing but the initiative of election, and letters recommendatory; it designates the person upon whom it recommends that the office should be conferred; but it confers nothing. It stands exactly in the situation of the dean and chapter in England. With regard to them, I read to the arbitrators, from Burns's Ecclesiastical Law, (title resignation,) that a bishop cannot resign to the dean and chapter; but only to the metropolitan. To this analogy it is objected, that the dean and chapter are only the formal electors, that the king is the real elector, and that to him the resignation is in fact made; for it is made to the metropolitan, who is his agent or instrument for receiving it. The reason assigned in Burns, for not resigning to the dean and chapter, is very different—that resignation can be made *to a superior only*, which the dean and chapter certainly never were, even when their power of election was real: and the reason he assigns why the resignation must be made to the metropolitan, is not that he is the agent or instrument of the king, who is the real elector, but that he is himself the superior, who approves and confirms the election. Further, although by a statute in England, the power of election was in fact transferred from the dean and chapter to the king, all the forms of church government and discipline were retained: for that reason the *conge d'elire* was still preserved, and the appearance of an election kept up: for the same reason, if a bishop's resignation had been made to the dean and chapter, they would have been continued the king's agent and instrument for receiving

* See p. 21.

it, as well as for making the election. A statute took away their right of election, and transferred it to the king. There is no statute, canon, regulation or ordinance, civil or ecclesiastical, directing, that from thenceforth bishops should resign to their metropolitan, and not to the dean and chapter as formerly. Such a change could not have been effected without some statute, canon or ordinance; from whence it follows, that the incapacity of the dean and chapter to receive a resignation, is not a change made in consequence of their having lost their real right of election, but that the same was also the rule, when they enjoyed that right in its utmost extent; which makes the analogy between them and the state convention complete.

I have said that the state convention gives nothing but the initiative of election, and letters recommendatory. A few observations will demonstrate this position. According to the rules prescribed by the 3d general canon,* the letters recommendatory of the state convention, are to be presented to the house of clerical and lay deputies, in general convention; and the house of clerical and lay deputies must also, on their part, give a certificate in favour of the person designated to be a bishop. Suppose the house of clerical and lay deputies should disapprove of the state convention's choice, and refuse their testimony; no power or authority could force them to retract, and the election by the state convention would be a nullity. With what justice then could it be pretended that the state convention had conferred the office of bishop on the person they designated, who never was, and never could be a bishop, unless the house of clerical and lay deputies should alter their opinion of him, and also join in letters recommendatory. Suppose the bishops, notwithstanding the certificates of both bodies, should deem the person designated not of sufficient learning and piety, could he return back to the state convention, or to any other tribunal, and apply for a mandamus or any other process to compel his admission and consecration? What ecclesiastical autho-

* See p. 34, 35.

rity is there to control the bishops, or to give efficacy to this election by the state convention, which is said to confer the office? The house of bishops, gentlemen say, can do nothing in the business but by consecration, which is to follow on the production of the regular certificates. This position seems to me most extraordinary, and shows a difference between their notions of church government and those of the most approved episcopal authorities, which is inadmissible, and almost inexplicable. All those which I formerly cited to the arbitrators,* and to them I might add every approved writer on the subject, (if the extreme length of this address did not prevent me from multiplying quotations,) lay it down that no man can be a bishop of a diocese without the approbation and confirmation of the metropolitan, or of the provincial synod. I may more particularly refer to Potter on Church Government,† who, after stating the particulars specified by the 4th canon of the council of Nice, says, “whence it is manifest that the *consent of the metropolitan, and the majority of the co-provincial bishops*, was then required to the appointment of any bishop, before he could be ordained.” And to Bingham’s Antiquities of the Christian Church,‡ speaking of the powers and privileges of metropolitans, he says, “no bishop was to be elected or ordained without their consent and approbation: otherwise the canons pronounce both the election and consecration null. The *υπος* or *ratification* of all that is done, says the council of Nice, belongs to the metropolitan in every province, and again, if any bishop is made without the consent of the metropolitan, this great synod pronounces such an one to be no bishop. The same rule is repeated in the councils of Antioch, Laodicea, Artas, Turin, Sardica, Ephesus and Chalcedon;” and in sect. 14, he says, “but here I must observe that this power of metropolitans was not arbitrary. For, though no bishop was to be elected or ordained without their consent, yet they had no negative voice in the matter, but were to be deter-

* See p. 270 to 272, and 273, 279.

† Chap. v. p. 467.

‡ Book ii. chap. 16, § 12.

mined and concluded by the major part of a provincial synod." In England, Gibson lays it down,* that the confirmation of the bishop in his province, of right belongs to the metropolitan. And such undoubtedly is the rule of the church in that country. From it sprung our own church, not by a forcible and hostile convulsion, nor in consequence of any religious dissatisfaction; but, like the voluntary separation of a province, which from considerations of justice, and of mutual convenience, has been erected, with the consent of the parent country, into a distinct state; in which the antecedently existing laws, until changed by competent authority, are the birthright of every member of the new community. On any subject for which those laws had adequately provided, no man could be permitted to say, that as to that matter, nothing was prohibited or restrained in the newly created state, since its own immediate legislature had passed no statute or ordinance respecting it. The answer would be, the law that regulates it was prior to the existence of our state; it comes to us by inheritance from our fathers, and we brought it with us into this association. So is it with our ecclesiastical government. In organizing and becoming members of the protestant episcopal church in America, no one considered himself as becoming a member of a new religion, or as adopting a different form or rules of ecclesiastical government; except so far forth as depended on the connexion in England between church and state, and the regulations in that country, which were produced by the king's being head of the church. These were all necessarily rejected as inapplicable to our situation; but in every other respect, the rules and laws of our mother church, where they can be applied, are the *common law* of our own religious association.

This view of our relation to the church of England is conformable to the account of the origin and progress of the protestant episcopal church in the United States of America, published in the American edition of Rees's New Cyclopædia, as a subdivision of the article church. The account is

* *Codex*, vol. i. p. 128.

most peculiarly entitled to attention and respect, because it is known to have come from the pen of bishop White. He states the steps taken by the first convention in 1785, for procuring an episcopate from England: among other things, "they addressed the arch-bishops and bishops of England, stating that the episcopal church in the United States had been severed, by a civil revolution, from the jurisdiction of the parent church in England; acknowledging the favours formerly received from the bishops of London in particular, and from the arch-bishops and bishops in general, through the medium of the society for propagating the gospel; *declaring their desire to perpetuate among them the principles of the church of England, in doctrine, discipline, and worship*; and praying that their lordships would consecrate to the episcopacy, those persons who should be sent with that view, from the churches in any of the states respectively."

From the foregoing reasoning, I think it follows, that whether we look to the primitive churches, or to that from which we are but lately separated, it is essential to the validity of a bishop's appointment, that his election should be approved of by some person or body, having superior episcopal authority. In the primitive churches, (and perhaps in every church not connected with the civil power, legally established) by the provincial synod guiding the metropolitan, in England, where synods are nearly prohibited, by the metropolitan alone. This rule, then, required no article in the constitution nor special canon to establish it in our church any more than it required an article in the constitution, or a canon to establish the office of bishop itself. Both existed there prior to any constitution or canon, and the only subject for discussion in this case can be, in what person or body is that confirmatory power vested: it must be a person or body *entirely episcopal*; there is no person or body entirely episcopal and superior to an individual diocesan bishop but the house of bishops, and therefore of necessity, that and that only, can *at present*, be the body by which the bishop elect must be approved of, and his election confirmed. Indeed, when our church organization shall have been more completely developed, when perhaps there may be metropolitans in the

states, and will be provincial synods in the collective bodies of the bishops of those states, and when by that development of our church organization, the house of bishops of the church at large shall be, what in time it must be, the great national synod, then a canon may be requisite to decide whether the confirmatory power shall rest, as in England, with the metropolitan of each state, or be exercised as in the primitive churches by the state synods. But now the house of bishops, as being the only superior episcopal body, possesses in itself metropolitan powers over every individual bishop; it is for the same reason a provincial synod, and as the highest episcopal body in the church, it is, and always will be the national synod.

In the argument of the opposite counsel, when observing on the authorities I have referred to, it was urged that the house of clerical and lay deputies was the provincial synod, and therefore that its letters recommendatory were the confirmation of the provincial synod, and the authority for any three bishops to consecrate. If that were true, still the state convention would only possess the initiative of election, and would not be the body to which a bishop should resign, or by which his resignation could be accepted; of course bishop Provoost's resignation should have been made to, and accepted by that house, before it was valid. Even this position, therefore, would answer the purposes of my argument, but it is entirely untenable, and founded on a misunderstanding of the term *synod*. A synod in our episcopal churches never is and never was any thing but an assembly or council of bishops. In support of this assertion I appeal to Broughton's Historical Dictionary of all Religions, title synod.* The general convention is the ecclesiastical legislature of the whole church, for temporal regulations concerning it, and to this, lay delegates and presbyters of the lower order, may well be admitted; but with spiritual matters, merely jurisdictional, none but bishops can interfere; the house of bishops does not take cognizance of *them*, as a constituent part of the convention, but by authority independent of any of our canons or articles

* See page 279, 280.

of the church constitution, and derived to it from the practice of the primitive churches, and consistent with the essential principles of ecclesiastical order. Under that practice and that order, and consistent with the essential principles of episcopacy, neither the state conventions, nor the house of clerical and lay delegates, both consisting of laymen and unconsecrated priests, can exercise or interfere with any episcopal act: the ratification of an election to a vacant see, is indispensable, and has been in all ages an episcopal act; therefore, there is no existing body in our church, other than the house of bishops competent to exercise it, and of course, they and they only have the power to do so.

Let us test still further this extraordinary doctrine, that the house of bishops have nothing to do with the election of a bishop, but by consecration; and of course, as three bishops can consecrate, the house of bishops, as such, have nothing to do with it. The error of this assertion consists in confounding together confirmation and consecration, or in keeping out of view the necessity of confirmation to the validity of the election. This will appear from the statement of one or two cases. In the course of a short time, it is expected and hoped by those who wish for the extension and increase of the church, that every state will have its own bishop; in that case the house of bishops would consist of at least seventeen; suppose it to consist as it shortly will, of seven, and a person with the requisite certificates to be presented to them; but that four out of seven deemed him improper, and refused their approbation, could the three dissentients consecrate him, in despite of the house of bishops, and fix him in the diocese? Some of the writers I have already referred to* expressly say, that such a consecration would in itself be null; and they state that to have been declared by the Nicene council, which is allowed by every episcopal church to be of the highest and most venerable authority. The episcopal church of Scotland too, when by its severance from the civil government, it ceased to be legally established, and was under the necessity of restoring itself to the practice of the

* See p. 271, 272.

primitive churches, made the following canon, conformably to that practice, and to be found in Skinner's Ecclesiastical History of Scotland,* canon 1st, " That no person shall be consecrated a bishop without the consent and approbation of the majority of the bishops; and that if any three or more bishops, not being a majority, shall take upon them without such consent, to consecrate any person to that office, such consecration shall be *null and void*; and both *the consecrator and the consecrated* shall be holden as *schismatics*." Again, suppose a bishop coming from any foreign episcopal church, or from any other state (and of course consecrated) to be elected by the state convention, and testimonials given to him by that body, and by the house of clerical and lay deputies, if under the third general canon any certificates would in such a case be requisite, could this bishop assume the jurisdiction of the diocese, without the consent and approbation of the house of bishops? He would have that which the opposite counsel consider as a complete election, and also consecration; he would want only that, which they say is nothing, the confirmation of the election by the house of bishops. The necessity of that confirmation is fully shown by the quotations which I formerly submitted to the arbitrators from Bingham, Barrow, and bishop Potter and Skinner;† but I particularly select the citation from Skinner's Ecclesiastical History of Scotland, vol. 2. p. 628, relative to the transactions after the death of bishop Rose, as furnishing a very striking proof to the contrary. The connexion of the protestant episcopal church with the state in that country having been dissolved, and there being great danger from the age of the then bishops, that the episcopal succession would fail, a step was taken, dictated by necessity, and the peculiar circumstances in which they were placed, but the regularity of which was very doubtful, and very much disputed; they consecrated bishops of the church at large, to whom no peculiar diocesan jurisdiction was assigned. In this way, at different times bishops Sage, Fullarton, Falconer, Millar and Irvine were consecrated. After the death of bishop Rose, bishop of Edinburgh, the proceedings took place contained in that

* See vol. 2. p. 655.

† See p. 273, 274.

citation, and which I shall take the liberty of again reading, as it furnishes matter for many observations applicable to this question. "On that melancholy event, the clergy of Edinburgh met to deliberate upon their affairs, and advise among themselves, whether it was proper now to make any advance towards the choice of a successor; which having been the primitive mode, they concluded was their privilege, now the connexion of the church with the state, which had brought in another method, was dissolved. This was carried in the affirmative. Upon the 28th of April they had another meeting, when the instruments of consecration of the several bishops were laid before them," (i. e. before the meeting of the clergy of Edinburgh,) "by bishop Falconer, who in the name of his brethren said, that though they were bishops of this church, intended for preserving the episcopal succession in it, yet they did not pretend to have jurisdiction over any *particular* place or district; and therefore advised them to pitch upon a proper person to take the management of their affairs. So the next day, they convened a third time, and with all the formality possible and proper for such a business, elected bishop John Fullarton to be bishop of Edinburgh, which was immediately accepted by him, and ratified by his three brethren, *with this limitation*, that he should not as bishop of Edinburgh succeed to the vicarious metropolitical powers, which bishop Rose had exercised, but should only have a privilege to convocate his brethren, when the exigencies of the church required, and preside in such meetings." Other instances of the exercise of this right of ratifying and controlling elections, by the college of bishops, and of regular submission, on the part of the presbyters in the several dioceses, are to be found in the same historian.* But to confine myself to the case of the bishop of Edinburgh, he was already a consecrated bishop, he was as such elected by the clergy of the diocese to have jurisdiction there; and yet, although he was consecrated, it was necessary that his election should be ratified by the other bishops being the college of bishops or synod; and (which I wish particularly to fix on the minds of the arbitrators, for

* See vol. 2. pages 644, 645.

another part of this discussion; whether the house of bishops could modify or partially control the election of bishop Moore by the state convention) although bishop Fullarton was elected to a see, having previously had vicarious metropolitan powers, by an election purporting to confer on him the full extent of the episcopal powers, exercised by his predecessor bishop Rose, yet the college of bishops *annexed to their ratification, a limitation, destructive of almost all those powers.* In these proceedings the strictest attention was paid to the practice of the primitive churches; and in conformity to it, the same church passed a canon to be found in the same book, p. 656,* canon 5th, “That if the presbyters of any district shall happen to elect a person *already vested with the episcopal character*, the bishop so elected, shall have no *jurisdiction over that district*, until his election be *confirmed by the majority of the bishops*; and if they shall elect a presbyter of whose fitness for that office the bishops shall declare they have sufficient reasons not to be satisfied, in that case the presbyters shall be required by the bishops to proceed to a new election.” Do not all those quotations and arguments establish the position, that every election of a bishop, before it can have effect, must be ratified by the house of bishops, as possessing the whole of the episcopal power and jurisdiction superior to that of each individual diocesan, and that such superior episcopal power, necessarily exists in every episcopal church? The arbitrators then may judge, with what surprise, I read in the testimony of the rev. Mr. Wilkins,† the following passage, “The house of bishops has not, in the opinion of the deponent, any power, as a college of bishops separately in this country.” Such a power can only be exercised by *bishops*; its jurisdictional parts cannot be participated with the house of clerical and lay delegates, who have no episcopal character; its existence is necessary to ecclesiastical order; where then is it? To every well organized association, there must not only be a body to make laws; but also one to exercise jurisdiction. In the general convention, we recognize the legislature of the protestant episcopal

* See p. 275.

† See p. 241.

church in the United States; but where is the person or body having its supreme episcopal jurisdiction? Where can that reside except in the house of bishops, acting separately as a synod or college of bishops? The objection against the existence of this supreme episcopal jurisdiction in the house of bishops, rests solely on the same argument I have already observed upon, so far as it relates to the power of ratifying the election, that it is given by no canon or article of the constitution. No canon or article of the constitution gives or pretends to give to bishops, their portion of episcopal jurisdiction, and yet they incontestibly possess it. No canon or article of the constitution prescribes where the metropolitan or synodical powers, as to spiritual matters, or those exclusively belonging to episcopal jurisdiction are vested, and yet they must vest somewhere—no canon or article of the constitution has given them to the state convention, for which they are now claimed, nor to the house of clerical and lay delegates, both being incapable of exercising the consecrated office. No canon or article of the constitution has taken away that episcopal jurisdiction from the only existing episcopal body in the church, to whom, according to the practice of primitive churches and established ecclesiastical order, it would rightfully belong. In short, no canon or article of the constitution has pretended to meddle with it at all; and why? because it required no enactment for its perfect regulation; the right to it in some episcopal body or other, was derived from the common law of our church, and was anterior to any canon, or to the constitution itself, and there were no two episcopal bodies or persons existing in our church, between whom there could be any collision on the subject.

From the canons, however, is drawn an argument against the possession of any ratifying power by the house of bishops. By the 5th general canon,* it is provided, that “if during the recess of the general convention, the church in any state or diocese should be desirous of the consecration of a bishop, the standing committee of the church in such state or dio-

* See page 35, 36.

-cese, may, by the president, or by some person or persons specially appointed, communicate the desire to the standing committees of the churches in the different states, together with copies of the necessary testimonials; and if the major number of the standing committees shall consent to the proposed consecration, the standing committee of the state or diocese concerned, may communicate the evidences of such consent, together with the other testimonials, *to any three bishops of the church*, who may thereon proceed to the consecration. The evidences of the consent of the different standing committees shall be in the form presented for the house of clerical and lay deputies in general convention; and, without the aforesaid requisites, no consecration shall take place during the recess of the general convention." It may perhaps be questionable whether this canon applies to any case, except where all the prescribed requisites of election and confirmation had been previously procured; in which case, it certainly could not intrench on the confirming power of the house of bishops; but I shall consider it as applying to cases where the house of bishops had never been consulted as to the fitness of the person elected. In that view, it would also appear to be a case in which the house of clerical and lay deputies had also not been consulted, nor even the state convention; but as if the whole matter were managed by the standing committees and three bishops. Suppose, however, the election to have been made by the state convention, it is evident the standing committees of the different states are in the place of the house of clerical and lay deputies. This is a canon making arrangement for cases of emergency, if not of necessity; and it is susceptible of alteration, whenever the number of bishops shall be increased, so as to make an augmentation from three, mentioned in the canon, to four, five, or six, &c. advisable. Perhaps that time is now arrived; but, until lately at least three were a majority, and indeed the whole effective number of the house of bishops. The three bishops, mentioned in the canon, may, or may not consecrate at their discretion. These things being understood, what is the nature of this canon? That unnecessary trouble shall not be given to the

venerable, but aged and infirm persons, who are endowed with the episcopal character, by compelling them to convene in a collective body at extraordinary times; that three being the majority, and nearly the totality of the college of bishops, may give their approbation or confirmation of the election, without meeting for that purpose: but it still meant to preserve the rule, that the consecration shall not be without the consent of the majority of the bishops. The only rights which have been infringed upon are those of the house of clerical and lay deputies, and perhaps of the state convention.

If I do not greatly deceive myself, I have incontrovertibly established those positions, that in the appointment of a bishop, the state convention possesses nothing but the initiative of election, which is merely inchoate, until seconded by another clerical and lay body in the general convention, and consummated by the confirmation of the house of bishops. That therefore the state convention neither conferred upon, nor invested bishop Provoost with that office; and that it had no right to receive, to accept, or to refuse the resignation of bishop Provoost, either upon that ground, or as possessing metropolitan powers; and that accordingly, it did no act which was, or was intended to be an acceptance of the resignation; but left it to stand on its own merits, and to be dealt with by the proper ecclesiastical authority. The same arguments would apply to the house of clerical and lay deputies; but it is not pretended that they did any official act capable of being considered as an acceptance. They certainly felt they had nothing to do with it, and took no notice of it, because it was their duty to submit to the decision of the house of bishops on that subject. The house of bishops did take cognizance of bishop Provoost's act, and of the initiative act of the state convention; and it now remains to consider the nature and extent of their power and of their acts.

But before I begin that part of my case, let me put out of the way a very singular observation which I had nearly forgotten. It has been said that as bishop Provoost received his office from the arch-bishop of Canterbury, it is to him, and not to the house of bishops that the resignation should have been

made. Even if that were correct, it would still follow that no effectual resignation had been made, and that bishop Provoost is still the diocesan. The truth, however, is, that when a new member of the general episcopal church is to be organized, the first acts towards it may be done by foreign bishops, whose jurisdiction extends to every destitute part of the christian church, by which it is solicited. When the necessity ceases, and more appropriate bishops are appointed, the jurisdiction, which grew out of that necessity also ceases, and the whole of the episcopal jurisdiction is vested in the newly appointed successors to the apostles, in the same manner as if that individual church had been immemorially constituted. If I might apply to the case one of our technical law phrases, I would compare it to the rule of holding a *feudum novum ut antiquum*. Adopting the analogy I have already used, of a province, voluntarily and by mutual consent, separating from its parent state, and becoming independent, I may observe that although the known and necessary officers, whose duties were intimately connected with the adopted and antecedently existing laws, might well be allowed to continue in the new state under their previous appointments; yet, in every future transaction, they must act with the new government as if it were the immediate fountain of their authority. Besides, we claim the right of accepting or rejecting the resignation for the house of bishops, not on the ground of their conferring the office, (that view of the question having originated with our adversaries,) but because in the ecclesiastical order of our church, they are the immediate episcopal superior of each individual bishop. This undoubtedly the arch-bishop of Canterbury is not, and they are.

As to the nature and extent of the powers of that house, I trust I have already said enough. Whether we consider them as possessing metropolitan jurisdiction over every diocesan, as a college of bishops, as a provincial or national synod, there is no episcopal body which can contest with them the supreme episcopal authority of the protestant episcopal church in the United States. Whatever must be done in any of those characters, for the present at least, can only

be done by them. The acceptance of a bishop's resignation, and the judging of its propriety is of that kind. To meet the acts of the house of bishops, upon which I am next to observe, it has been urged that their acts are no law of the church. This is very pointedly and triumphantly put by bishop Hobart in his "Statement."* His argument is, that to a law the concurrence of both houses is necessary, and that the house of clerical and lay deputies gave no concurrence. He also fortifies himself by an expression, I think over cautiously used by bishop White in a letter published in the "Statement,"† "Now, although I was a party to that instrument, and still think it was founded on correct principles, yet I cannot affirm that the act of the bishops, with the circumstance of there being no opposition on the part of the other house, rendered the measure a law of the church." I at once agree to the position; it is not a law of the church, it claims, and can have no validity as such. Bishop Hobart calls it a mere opinion, having no binding efficacy. In that he is incorrect; it is a *decision* by the only competent tribunal, and applies to an individual case the antecedently existing and long established laws of every christian episcopal church. Do you legislate when you, as judges of the supreme court, apply the laws of real property to the particular title of any estate? By what perversion of mind was it possible ever to consider as an act of legislation the decision, or, if you will, the adjudication that bishop Provoost's contemplated resignation was not "consistent with ecclesiastical order, with the practice of episcopal churches in any ages, or with the tenor of the office of consecration," and that it could not be recognized "as an effectual resignation of his episcopal jurisdiction?" Is it an act of legislation to pronounce whether a particular act be lawful or not? And yet, on this confusion of jurisdictional with legislative acts, is the firmest part of bishop Hobart's argument triumphantly established! He says it cannot affect bishop Provoost's resignation, because it was an *ex post facto* law, if a valid act of legislation! that it was not a valid act of legislation, ha-

* See page 28, *et sequent.*

† See p. 12.

cause the house of clerical and lay deputies never acted upon it! They never acted upon it, because they rightly considered it, not as of a legislative character, but as the decision of the bishops, on antecedently established law, and therefore "not designed to be acted upon by them." They entered the communication from the bishops on their journals, and took no other notice of it, because they had no authority to notice it, further than respectfully to submit and conform themselves to it. It affects bishop Provoost's resignation, not as an *ex post facto* or any other law; but as a *judgment* on a matter of episcopal cognizance and jurisdiction, pronounced by the only competent episcopal tribunal, and founded on the long settled common law of all episcopal churches, which that venerable judicial body collected from the uniform practice of those churches in every age, from the principles of ecclesiastical order, and from the tenor of the office of consecration. Whether the opinion they delivered, and the judgment they pronounced, were well or ill founded, their act was jurisdictional: and as they are the supreme judicial tribunal of our church, there is no appeal from their decision; it must therefore be received and submitted to, as truly speaking of the law of the church.

Let us now examine the proceedings which took place respecting the resignation of bishop Provoost, and the consecration of bishop Moore, in order to ascertain the relative character of each. The former, by a verbal act in the state convention, did what he intended and believed to be a valid resignation of his office; for I have cited sufficient authority to the arbitrators,* from Bingham's *Ecclesiastical Antiquities* of the Christian Church,† to show that episcopal office and jurisdiction mean the same thing; and bishop Provoost undoubtedly meant to resign the whole of his office. The state convention, feeling no right to control him, but providing, according to their duty, for the vacancy, should his act be valid, or made so by the proper authority, elect bishop Moore, and furnish him with the requisite testimonials.

* See p. 272, 273. † Book ii. chap. 1. § 1.

This was perhaps a proper measure of precaution, as the state convention would not be sitting when the validity of that act should be decided on. The house of clerical and lay deputies being in session, before they proceeded to sign any testimonials, sent a message to the house of bishops,* to know whether they had received any communication from bishop Provoost on the subject of his resignation. This conduct is extremely remarkable, and strikingly shows their sentiments. If there had been an undisputed vacancy in the diocese, they would at once have signed the requisite testimonials, and transmitted them, with those of the state convention, to the house of bishops—but in this case, before they do so, they send a message to that house. Why? Because they were sensible there was no undisputed vacancy, and that the house of bishops must decide upon the existence of that vacancy, before their testimonials could be of any avail; they therefore reversed the ordinary course of proceeding—delayed their own act, and waited to hear from the house of bishops, by whose decision, it is manifest, they were to be regulated as to that act. The house of bishops had taken into consideration bishop Provoost's letter to bishop White,† in which he certainly stated that he had resigned his jurisdiction at the late meeting of the state convention: but doubting the validity or practicability of such a resignation, and wishing to act with deliberation and circumspection, they solicited an interview with the clerical delegates from the diocese of New-York, the particulars of which are to be found in Mr. Ireland's testimony.‡ The delegates, Mr. Ireland says, were four, Dr. Beach, Mr. Wilkins, Mr. Hobart, and himself. Gentlemen on the other side, doubtless with the view of discrediting Mr. Ireland, say that Mr. Wilkins remembers nothing of this. I am sorry for it; but the infirmities of nature will creep on us. Dr. Beach appears to have known it, when as president of the state convention in 1811, he agreed from the chair that bishop Provoost was the diocesan, and bishop Moore only as-

* See p. 40. † See p. 124, 125. ‡ See page 120.

assistant. Bishop Hobart seems to have recollected it; or why did he accept letters of consecration as bishop, to assist the *bishops* of the church in this state?

The doubts of the house of bishops having been in no respect removed by the interview with the clerical delegates from New-York, they returned an answer to the house of clerical and lay deputies,* in which they treat the act of bishop Provoost as having in itself no validity; as having received none from any real or constructive acceptance of it by the state convention; as merely a *contemplated resignation*, and a *design in question*; declare it inconsistent with ecclesiastical order, with the practice of episcopal churches in any ages, and that they judge it to be inconsistent with the sacred trust committed to them, to recognize the bishop's act as an effectual resignation of his episcopal jurisdiction. Nevertheless, in consideration of the present exigencies of the church in this diocese, they announce they are ready to consecrate to the office of bishop, any person who may be presented to them with the requisite testimonials from the general and state conventions, and of whose religious, moral and literary character, due satisfaction may be given, and conclude thus: "But this house must be understood to be explicit in their declaration, that they shall consider such a person as assistant or 'coadjutor bishop during bishop Provoost's life, although competent in point of character to all the episcopal duties; the extent in which the same shall be discharged by him, to be dependent on such regulations as expediency may dictate to the church in New-York, grounded on the indisposition of bishop Provoost, and with his concurrence." This message it is said comes from a body that had nothing to do with the question of bishop Provoost's resignation, and yet the house of clerical and lay delegates called for it before they signed their own certificate, or forwarded that of the state convention in favour of Dr. Moore: it treats that resignation as an invalid and ineffectual act; and yet bishop Hobart, and his associates in opinion, consider the resignation perfect, without any acquiescence or con-

† See p. 40.

currence of any other person or body. But assuredly, when that right reverend controversialist thought fit, in his "Statement," to give vent to language of contumely against Mr. Jones, for daring to call bishop Provoost's act a *proffered resignation*, he did not intend to extend the insult of his contradiction to that most venerable body of which he had so lately become a member: he must have forgotten that they also called it a *contemplated resignation*, and a mere *design in question*. This message is also considered by our adversaries as a mere opinion, having no binding efficacy: but its language is expressly different; its style is that of authority, power, and control:—"they judge it to be inconsistent with the sacred trust committed to them to recognize the bishop's act as an effectual resignation of his episcopal jurisdiction:" and again, "but this house *must be understood* to be explicit in their declaration, that *they shall consider* such a person as assistant or coadjutor bishop during bishop Provoost's life," &c. and also, "the extent to which the same shall be discharged, *to be dependent on such regulations as expediency may dictate* to the church in New-York," &c. The house of bishops also declared that they would consecrate any person who should be presented to them with the requisite testimonials from the general and state conventions, "and of whose religious, moral, and literary character, due satisfaction may be given." By this they claimed and reserved to themselves a right to consider and judge, and of course to approve and confirm the election independently of those certificates, and to do so as a distinct and antecedent act to consecration. Every part of this message then, was a clear assertion and exercise of that episcopal jurisdiction which they hold under the general principles of our church government, and for which they are not indebted to any canon or article in the constitution.

The house of clerical and lay deputies having received what they solicited from the bishops, their decision on the state of the church created by bishop Provoost's act; and finding that the customary certificates would be required, signed their own, and forwarded it with that of the state convention. They did no more, and for this reason, that as sub-

mission and acquiescence were their duty, nothing more would have become them. But if they imagined that the bishops had in their message assumed more authority than they rightfully possessed; or that it interfered with the elective rights guaranteed to the state convention by the fourth article of the general constitution; or that it improperly questioned the validity of bishop Provoost's resignation, which that convention had rightfully accepted; or that, in explicitly asserting that they would only consider bishop Moore as the assistant, and bishop Provoost as the diocesan, they were laying the foundation of future doubts, heart-burnings, and perhaps schisms in the church, growing out of an unauthorised, erroneous, and ill-judged opinion:—If, I say, the house of clerical and lay deputies had considered that message in any disputable shape as to its propriety or future effects, it is not possible to conceive that they should have entirely forgotten their own important station and duties, and have contented themselves with simply placing it on their journals without reply, comment, or animadversion. Without reply, comment, or animadversion they signed the testimonials which the house of bishops had previously declared should only operate to make an assistant bishop, notwithstanding the resolutions and act of the state convention. Mr. Wilkins, indeed, in his testimony* says, “he thinks that the opinion expressed by the house of bishops at that time, as to the resignation of a bishop, was considered by the house of clerical and lay deputies as a mere opinion, in no wise binding on them.” If so, their silence cannot be too severely reprobated, as a careless, faithless, and criminal dereliction of their duty to preserve the good order, tranquillity, and correct discipline of that part of the christian church with which they were connected. He further says,† “the deputies” (i. e. the clerical deputies from New-York, whom the bishops had invited to an interview) “returned with the same sentiments they had previously entertained on that subject; the business went on as usual; bishop Moore was consecrated, and as the deponent then, and has ever since be-

* See page 239.

† See page 241.

ieved, the diocesan of the state; and as far as he understood the opinions of the members of the house of clerical and lay deputies, this was the opinion of all of them." The silence of those entertaining that opinion, when their official stations called on them to speak and act decidedly, was most singularly strange and censurable. The silence of those who thought the house of bishops had only acted within the sphere of their duty, and that their message declared, and therefore settled the law of the church, was respectful and proper. I am therefore willing to hope that Mr. Wilkins is mistaken in his recollection or his judgment of the general opinion. He recollects nothing of the particulars of the interview between the New-York clerical deputies and the bishops, to which Mr. Ireland has testified. He says, those deputies returned with the same sentiments they had previously entertained on that subject. Mr. Ireland says they acquiesced in the decision of the bishops to consecrate bishop Moore as an assistant, and withdrew. Perhaps his recollection has failed him further; or he could not have conversed with the other witnesses who belonged to that convention, or with those of whom they speak. Mr. Ireland says,* "and the deponent understood, and as he firmly believes, every other member in both houses understood that he was consecrated an assistant bishop to bishop Provoost. The deponent says he is certain that it was then understood, and as he believes, by every member of both houses, that bishop Provoost's resignation was not then accepted." Dr. Harris also says,† "he thinks that the house of clerical and lay deputies acquiesced in the aforesaid communication, and was then of opinion that it belonged exclusively to the house of bishops to accept or not of bishop Provoost's resignation, and to prescribe the conditions upon which they would constitute another." And again,‡ "the deponent says, that when he attended, as a member of the house of clerical and lay deputies, the consecration of bishop Moore, and signed his testimonials, he did it on the ground that bishop Moore was thereby made an assistant or coadjutor bishop, and he verily

* See p. 125.

† See p. 132.

‡ See p. 132.

believes that such was the understanding of the other members of that convention." To this testimony may be added the expression of Dr. Beach, when chairman of the special convention in 1811, and called upon to decide; he then un-
 èquivocally declared that bishop Provoost was the diocesan; and therefore I cannot doubt but that he entertained the same opinion as one of the clerical deputies from New-York to the general convention in 1801. So I think must bishop Hobart himself have thought, or he never would have accepted letters of consecration as an assistant to bishop Provoost, as well as to bishop Moore. His opinions indeed seem now to be different, but that difference of sentiment was never made known (so far as I have heard) until the commencement of the present controversy. In the same light also did bishop Moore consider his own consecration. Mr. Ireland* testifies to this fact. "Immediately after the interview with the house of bishops, as aforesaid, he wrote to Dr. Moore, requesting him to come on without delay to Trenton, which he did, and was met at the stage-house by the deponent and several of the clerical and lay delegates, who had an interview with Dr. Moore, and explained to him all that had passed, and what is herein before related respecting his intended consecration; and particularly that the clerical delegates from New-York had acquiesced in his, Dr. Moore's consecration as an assistant to bishop Provoost; to which Dr. Moore replied, that if he had known so much before he left home, he would not have come on. The deponent has a distinct recollection of the preceding observation of Dr. Moore, because he at the time chided the deponent in terms of severity, for not having communicated to him the terms on which he was to be consecrated bishop, as he did also another person present, who, the deponent understood, had likewise written to Dr. Moore on the subject." On this disappointment and resentment of bishop Moore, which, notwithstanding the "destitute state of the church in this diocese," would have prevented his going from New-York to Trenton to be consecrated an assistant bishop, though he

* See p. 125.

readily undertook the same journey in order to be consecrated diocesan, I do not mean to dwell; I shall, however, observe that it may afford some palliation for what bishop Hobart calls the inordinate love of power of Mr. Feltus, in refusing to accept the office of *assistant* minister, when he could not be co-rector: and I cannot help thinking, that in the sheet of accusations prepared by bishop Hobart against Mr. Feltus, and presented to bishop Moore himself, he reprobates this "love of power," considering every thing, in terms too pointed, and scarcely respectful, when he says, "it appears to us little consistent with that christian humility which should ever be the attendant of extraordinary piety, and of extraordinary zeal for the glory of God and the good of souls, in Mr. Feltus to disdain the office of assistant minister, which has subsisted from time immemorial in episcopal churches, and has at different times and in different places been cheerfully filled by persons of at least equal pretensions with Mr. Feltus." This dissatisfaction on the part of bishop Moore may also serve to explain the facility with which he has brought himself to claim the diocesan powers, which the house of bishops withheld from him. The only use of it, however, which I shall at present make, is to show, that although he disliked the arrangement, he submitted to it, and accepted consecration, with the express knowledge that he was only received and consecrated as an assistant.

His letters of consecration, however, are relied upon, as having done away these conditions,* for they state him to have been consecrated "into the office of bishop of the protestant episcopal church in the state of New-York, to which he hath been elected by the convention of the said state, in consequence of the inability of the right rev. bishop Provoost, and of his declining all episcopal jurisdiction within the said state." To this, many answers may be given. These letters bear date the day after the message, and are executed by the same persons as sent that message, only that they were not at the consecration acting in a collective capacity, as a house of bishops, synod, or college;

* See page 42.

but only as individual bishops. The two instruments must be considered as cotemporaneous, and the latter must be construed so as to make it consistent with the former, which is also the governing instrument. If the three consecrated bishops had intended to overturn the act of the house of bishops, they were not in their individual capacities competent to do it; but they had no such intention. Bishop White, the senior bishop, in the article church, already quoted from the American edition of Rees's Cyclopædia, sets forth the message of the house of bishops, and then goes on; "*conformably with the line of conduct thus laid down*, Dr. Benjamin Moore, being duly recommended, was consecrated during the session in St. Michael's Church Trenton, and took his seat in the house of bishops." In giving the letters of consecration, the duty of the bishops was to attest the fact of consecration, and the diocese to which he was allotted, but the message of the house expressly settled the limitations of his authority. The office into which they consecrated him was undoubtedly that of bishop of this diocese; the same expression is used in bishop Hobart's letters of consecration; but they carefully omitted the word assistant, because if it had been inserted, after bishop Provoost's death, it would have created the necessity of a new appointment, to make him diocesan. This is clearly also the opinion of Mr. Wilkins, though his phraseology is loose and inaccurate,* "he thinks that if the house of bishops should consecrate a person, as an assistant, or coadjutor bishop, that person could not become a diocesan, without the subsequent act or concurrence of the house of bishops." To avoid this difficulty the word assistant was omitted, and terms used that would express diocesan authority, when by the death of bishop Provoost, he could assume it, conformably with the limitations imposed by the house of bishops. Subsequently indeed, in the letters of bishop Hobart, a different and a better mode of doing the same thing has been adopted; but that probably did not occur, or seem advisable to the bishops on the former occasion. It is however manifest that bishop Moore's letters intimate nothing of an acceptance of bishop Provoost's resig-

* See p. 241.

nation, for then the word "resignation," would naturally have been used; they only speak of his *inability*, and of his *declining* all episcopal jurisdiction.

But it is further urged, the election of the state convention was unequivocally to the office of diocesan, and the house of bishops had no right to annex a condition or limitation to the unconditional and unlimited act of the state convention. If that were correct, what would be the result? It would not make the resignation of bishop Provoost valid, contrary to the house of bishops refusal to recognize it. He was the diocesan originally, and must continue so, until death, accepted resignation or competent removal. None of these happened—he was therefore still the diocesan; there was therefore no vacancy, the election by the state convention was therefore a nullity *ab initio*, and bishop Moore was consecrated a bishop without the proper election by the state convention. What pleasure that conclusion can afford to bishop Moore or his friends, or what advantage can result from it to their argument, I am at a loss to conjecture: but it is not correct. The state convention, in electing, have no right to fix upon or judge of conditions or limitations to the office; it is no part of their function; they are only to designate the person upon whom it would be acceptable, that episcopal authority should be conferred, in case the conferring of it should be found necessary, or advisable by the house of bishops. Perhaps in this case, where there was no certain vacancy, as in the event of death, the state convention should, before they acted at all, have waited, as the house of clerical and lay deputies did, for the decision of the house of bishops, upon the validity of the resignation; but their more precipitate conduct originated from a good motive, and was received in good part by their superiors, who felt that no such act of election could affect or control their right to decide upon the preliminary question, the validity of the contemplated resignation. As they were willing to consecrate an assistant, the act of the state convention was therefore considered by them, a very sufficient designation who was the person of their choice, for receiving whatever portion of the episcopal power in their diocese, it might be thought fit to confer. But in truth, the right of limiting and controlling the extent

of that power or jurisdiction, according to the exigencies of the church, in each individual instance, always has belonged, and of necessity must belong to the episcopal head, where the civil regulations have not interfered to wrest it away, and transfer it to the supreme civil magistrate of the government. The house of bishops, being that episcopal head, confer that power, and *cujus est dare, ejus est disponere*. I have already marked out from the history of the episcopal church of Scotland, a very striking instance of its being exercised, where the college of bishops ratified the election of bishop Fullarton as bishop of Edinburgh; but with a limitation, that he should not possess metropolitical powers, further than to convoke the bishops, and preside at their meetings. Bishop Rose, his predecessor, had enjoyed them till his death. The presbyters of the diocese elected bishop Fullarton, without limitation to every thing connected with the episcopal jurisdiction of the diocese; which was metropolitan: but the bishops, by their own exclusive act, destroyed its metropolitical powers, and annexed a much more striking limitation to their ratification, than was done by the house of bishops in the case of bishop Moore.

The act of the house of bishops was therefore in all its parts correct, legal and binding; it was acquiesced in by the house of clerical and lay deputies, even if they had the power to contest it. It was known and submitted to by bishop Moore before his consecration; nothing has ever happened to abrogate it. And yet bishops Moore and Hobart, are now at the head of those, who assert the former's claim to diocesan jurisdiction, and totally deny that bishop Provoost has any connexion with this diocese. I cannot I confess conceal my astonishment that bishop Moore should pursue this course; when he himself acquiesced (although not with the best grace) in the decision of the house of bishops; and when, after having been clearly apprised of the condition of his consecration, he accepted the office of assistant bishop with all its limitations: nor have I words sufficiently strong to describe my sense of the infatuation of bishop Hobart, who puts forth to the world an acrimonious "Statement," written in a style scarcely episcopal, and certainly not evangelical; who pe-

remptorily controverts the jurisdictional authority of that body, into which he has lately been received, and boldly fixes the stigma of folly or of fraud on his own letters of consecration, which are the testimonials of his holy office ! Let us see what are the positions of bishop Hobart in his Statement, and how far they are consistent with his letters of consecration. The latter are to be found in the documents.* They purport to be given by " William White, D. D. bishop of the protestant episcopal church in the state of Pennsylvania, presiding bishop ; Samuel Provoost, D. D. bishop of the protestant episcopal church in the state of New-York ; and Abraham Jarvis, D. D. bishop of the protestant episcopal church in the state of Connecticut:" and they certify that they have consecrated John Henry Hobart, D. D. &c. " into the office of bishop of the protestant episcopal church in the state of New-York, to which he hath been elected by the convention of said state, to assist *the bishops* of the church in said state, in the duties," &c. Notwithstanding the very unequivocal recognition contained in this instrument, *accepted and acted upon by bishop Hobart*, he has not scrupled to maintain in his Statement,† and announce, as incontestibly proved, that " bishop Moore is *in right*, as he has been for years in fact, the *diocesan bishop* of the protestant episcopal church in the state of New-York. *Bishop Provoost has no right to this office*. He is indeed a bishop of the protestant episcopal church in the United States of America: but he is not *in any sense*, the bishop of the protestant episcopal church in the state of New-York. *He has no episcopal jurisdiction whatever over the protestant episcopal church in this diocese*." Let me with profound respect approach those *incontestibly proved* positions, and enquire into the proofs of any of them, which I have not yet examined. By what election or consecration (if bishop Provoost's resignation was a valid divestment of what he acquired by the original election of the convention of this state,) did he become a bishop *in the protestant episcopal church in the United States of America* ? He was not consecrated to that office, like the Scotch bishops, of whom I have

* See p. 42, 43.

See p. 6.†

already spoken. He would, I admit, notwithstanding that resignation, be a bishop *in the church at large*; that is, *in the reformed episcopal church of Christendom*: he would be a bishop at large (a new and curious expression, but not inaptly conceived to describe a new and curious situation.) But what election, appointment, or consecration was there, to limit and circumscribe the indefinite largeness of that character? He never had any episcopal jurisdiction or connection with the church in the United States, except so far as he was bishop of the state of New-York, which is part of that church. If that jurisdiction or connection was destroyed, was not every thing destroyed that gave him any episcopal relation to the church in the United States? By what reservation did he retain it? How is he better entitled to be a bishop of the church in the United States, than an English or Scotch bishop would be, if he were to resign his see in one of those countries, emigrate to America, and worship in our communion? How is he more a bishop in the protestant episcopal church in the United States, than he is of the protestant episcopal church in England, Scotland, or Denmark? For this *incontestibly proved* position, I confess I can find no proof. If then he be only *a bishop at large*, let me further ask, by what authority he could sit in our house of bishops any more than a resigned English or Scotch bishop resident here? And yet by a reference to the journals of the very house of bishops that ratified bishop Hobart's election, bishop Provoost's inability from sickness to attend, is noticed and entered on their journals; thereby, most unequivocally recognizing his right to sit among them. If he were only a bishop at large, he would nevertheless (and so would an English or Scotch bishop) be perfectly competent to assist in bishop Hobart's consecration; but the letters of consecration should state his title truly, they should have called him "a bishop of the protestant episcopal church; or at most, a bishop of the protestant episcopal church in the United States. But with the *incontestible proofs* possessed by bishop Hobart to the contrary, why did he ever submit to the insertion of falsehood in his own letters of consecration, and permit Samuel Provoost to be there stiled "*bishop of the protestant episcopal church in the state*"

of New-York," when "he is not in any sense, the bishop of the protestant episcopal church in the state of New-York?" If bishop Provoost "has no episcopal jurisdiction whatsoever over the protestant episcopal church in this diocese," who were meant by the terms in bishop Hobart's letters of consecration, "the bishops of the church in said state?" With the *incontestible proofs* which this latter gentleman boasts of being able to furnish, that bishop Provoost "has no episcopal jurisdiction whatsoever over the protestant episcopal church in this diocese," what infatuation could have induced him to devote himself by his consecration, and by the vows it expresses or implies, to assist such a man in the duties of the episcopal office in this state? I am lost in amazement at this conduct; but I must protect him against the inferences it almost forces on our minds. When he accepted the consecrated office, and devoted himself to assist bishop Provoost in his episcopal duties in this diocese, I am convinced he neither equivocated nor deceived: he had no doubt of the rightful powers and authority in this diocese, of both the bishops he undertook to assist. The only thing that can be alledged against him is, that when the authority of bishop Provoost was interposed as a shield to a proscribed clergyman and protected him from ruin; when it became a barrier against the accomplishment of a favourite object, then those doubts arose, and he raised his head against his rightful diocesan, forgot or set at naught the terms of his own tenure, and proclaimed to him and to the world—I am a bishop in this diocese—you, that would interpose and protect, are nothing here.

I say that at the time of his consecration he had no doubts of bishop Provoost's authority; I say it in charity, and I sincerely hope it is true. I think it must be so; for no doubt at the time was any where expressed. In our state convention, in May, 1811, as appears by Dr. Moore's evidence, already quoted,* and by several other witnesses, Mr. Harison moved that the person to be elected an assistant bishop, should, after the death of bishop Moore, be the diocesan: this was objected to as impossible, because bishop

* See p. 151.

Provoost was the diocesan; and Dr. Beach, the president of the convention, was appealed to, who confirmed the statement: Mr. Harison then modified his resolution accordingly. Here was a concession of the fact that bishop Provoost was the diocesan. The house of bishops also acting on that fact, record his absence, from indisposition, clearly recognizing him as one of their body; and the letters of consecration, of a few days later date, expressly give him his title, and notice his jurisdiction as bishop of this diocese. The public ecclesiastical acts of laymen, presbyters, or bishops, until the commencement of this controversy, had, whenever the occasion required it, admitted his rights. There is therefore the fairest reason to presume that Dr. Hobart did not at that time doubt them. But if the clergy of the diocese are to be bound by their supposed acquiescence in bishop Moore's diocesan acts, and Mr. Jones to be peculiarly pressed upon, because, where no particular meaning was attached to the word, and where it only served as an expression of compliment, and to round a period, he incautiously called bishop Moore his beloved diocesan, are no inferences to be pressed upon bishop Hobart and his supporters, from their individual or collective acts as delegates to the different conventions, and particularly from his letters of consecration?

Although indeed no ecclesiastical body had, before the existence of this controversy, presumed to question bishop Provoost's diocesan authority, it has since been unequivocally denied. Bishop Provoost having, by means of this controversy, for the first time learned, in his seclusion and retirement, the decision of the house of bishops, and that the extent in which bishop Moore was to exercise the episcopal duties, was required by that house to be dependent on such regulations as expediency might dictate to the church in New-York, addressed a letter to the state convention of 1812,* in which he states that he had only recently acquired this information; expresses a due respect for the sentiments so strongly and decisively expressed in the resolution of the house of bishops, and his readiness to act in deference to it,

* See page 49.

and to concur in any regulations which expediency might dictate to the church. In consequence thereof, the state convention, with bishop Hobart at their head, adopted a series of resolutions, also to be found in the documents,† which, if I am not much mistaken, the arbitrators are now prepared to view as a string of arrogant pretensions, false principles, and false statements.

They assert, in despite of the decision of the house of bishops, that the jurisdiction of a bishop over his diocese may be resigned, and that such resignation, when accepted by the state convention, creates a vacancy in the office of diocesan. They then state the resignation of bishop Provoost, and as I conceive, unfoundedly assert that his resignation was accepted by the convention; thereby abandoning, with bishop Hobart at their head, the line of argument triumphantly adopted by bishop Hobart in his "Statement." The resolutions then proceed on the same principle, that an acceptance by the state convention was necessary, and on the assumption that an acceptance was had; in consequence of which they say, bishop Provoost ceased to be the diocesan: and to meet the effect of his letter, and bishop White's opinion, they say he could neither assume, nor be restored to that character by any act of his own, or of the general convention, or of either of its houses, without the consent or participation of the state convention; they therefore vote that his claim to such character is unfounded. They then declare the whole diocesan authority to be exclusively in bishop Moore, inasmuch as he got consecration, although he undoubtedly got it with a different view and intention; and they call bishop Hobart *his* coadjutor; which I humbly conceive to be a misstatement of his letters of consecration, which say he was consecrated to assist the *bishops*, in the plural. After these preliminary argumentative resolutions, comes the conclusion—"And this convention, in their own names, and for the protestant episcopal church in this state, do hereby solemnly declare and acknowledge the said Benjamin Moore, and no other person, to be their true and lawful diocesan bishop: and that respect and obedience ought of

† See p. 50, 51.

right to be paid to him as such." These resolutions are put forward by the opposite counsel as a decisive adjudication of this question; and they call upon you to acquiesce in it, because it is made by the competent tribunal: and they allege it to be peculiarly respectable, on account of its nearly unanimous adoption; for Drs. Harris and Moore, and Mr. Feltus declined to vote on those resolutions. Now, on the contrary, I do not hesitate to pronounce them of no weight or consequence, except so far as they are schismatic and criminal; a factious effervescence from a body, that had no right to adjudicate or decide upon the matters they pretend to settle, and peculiarly contemptible for the approach to unanimity in their adoption. In order to give a key to these resolutions, and to this unanimity, let me advert to the evidence of Dr. Harris* and Dr. Moore.† At the meeting of the presbyters in November, 1811, Mr. Harison, as the organ of the vestry, made a long speech to convince them that bishop Provoost had resigned to the state convention; that his resignation was accepted; and that the state convention alone was the proper body to decide who was the diocesan. But without waiting for any future decision from even that exclusively proper body, "Mr. Harison observed that the vestry of Trinity Church would never acknowledge any other diocesan than bishop Moore, during his life." Apprised by this hint, the convention met. If I have not mispent my time and my arguments, I need not consume more of either in showing that to decide who was the rightful diocesan is entirely a question of episcopal jurisdiction. That the state convention possesses no jurisdiction of any kind; but is most peculiarly disqualified from interfering in matters of episcopal jurisdiction. As a decision, then, these resolutions are as insignificant as if they had avowedly come from the vestry of Trinity Church. But surely, it may be said, as an opinion, their unanimity entitles them to the utmost respect. Now let me suppose that all the arguments presented to you on the subject of the diocesan are fallacious; still, are they so totally destitute of all plausibility, as not to obtain adherents

* See p. 133.

† See p. 152.

in a numerous meeting? Is it in the nature of human intellect, so diversified, so various, differing so much in different persons, and wherever differences of opinion can possibly be entertained; is it consistent with the immense variety of man, that on a subject (if my reasoning has unfortunately been erroneous) so complicated, so difficult, and presenting such a variety of arguments, and so many points of view as you perceive this question does, any numerous and unprejudiced assembly should unanimously concur against even that erroneous reasoning. No, no; much as I admire the ingenuity and talents of my adversaries, I cannot admit that even they, (and no men would be more likely) could on the subject in question produce such universal conviction. Some, and I readily admit many of that convention, entertained decided and honest opinions conformably to which they voted; but nothing can prove more strongly, than does this unanimity, the dangerous power and overbearing influence of that corporation, which having swallowed up, occasionally disgorges small portions of that wealth that is required to feed and support our episcopal communion. "I had rather be wrong with Cato," said an enthusiastic admirer of that upright citizen, "I had rather be wrong with Cato, than right with the rest of Rome." May I be permitted, irreverently I admit, so far as relates to distinguished worth and virtue; but may I venture to paraphrase that expression for the use of all dependent presbyters, "I had rather be wrong with Trinity Church, than right with the house of bishops." And where no hopes of future benefits conciliated the judgment of any of the members of that convention, gratitude perhaps struck its roots into their minds: reason alone never produced that boasted concurrence of opinions.

But whatever may have caused it, the convention have committed an act of downright schism. A body of inferior presbyters and lay deputies have assumed to themselves metropolitan power and jurisdiction; have totally disclaimed the authority of the bishops of the church, and resist their proceedings in a matter peculiarly within their cognizance. To them I return the language of bishop Hobart himself,*

* See Statement, p. 7.

they who resist these proceedings, resist the lawful authority of the church; and on those who resist this authority and form any combination against it, must fall the guilt of causing division in the church, and of rending the body of Christ." I caution you against attaching any weight to these resolutions. They will, I trust, when reason and temper returns, be repented of in sackcloth and ashes; they must come under the cognizance and meet the censure of the heads of our church, if its discipline is not to be sacrificed to the mammon of unrighteousness. What that venerable body the house of bishops will hereafter do, I cannot undertake to say; perhaps, considering themselves poor in means and on worldly calculations weak, when compared with the mighty monster, by which this schism has been engendered, they may overlook the offence, hoping that it may not pass into a precedent, and thinking that the advanced life and infirmities of the objects of the controversy may cause it speedily to cease. But if the spirit of St. Paul dwell with the successors of the apostles, they will act, not with the temporising weakness of timid politicians, but with the dignity of their holy office; they will command this rebellious convention, laity, clergy, and bishop, all to submit to their authority, or depart from the communion. And here, in the very center of the schismatic camp, I raise the standard of my rightful superiors, which I will abide by, unless they should be forced to capitulate, and direct me to strike their flag. Never, until *they* can bring themselves to sanction usurpation, will I submit to what I consider a presumptuous, arrogant, and unhallowed intrusion into the sanctuaries of our church.

It is however suggested that, even though bishop Provoost should be considered as the diocesan, bishop Moore is an assistant or coadjutor bishop, and as such competent to all episcopal duties. On this topic much learning has been bestowed to show that as coadjutor he possesses all the powers of the diocesan. I shall not spend much time in answering it, not only because I think the authorities with which I furnished the arbitrators* afford a sufficient answer; but also because

the house of bishops, besides the word *coadjutor* use the word *assistant*, which I think is the term by much the most correctly descriptive of his situation; and also, because they have not left the extent of his powers to be inferred from books or authorities, but have expressly declared that it shall be “dependent on such regulations as expediency may dictate to the church in New-York, grounded on the indisposition of bishop Provoost, and with his concurrence.” It is true no such regulations have yet been made, and it is contended that the extent of his jurisdiction, is on that account, without limits. For my part I should judge differently: I should say that until such regulations were made, the exercise of his episcopal duties *had no extent* under any appropriate appointment to the diocese; that until they were made, he was *quasi a bishop at large*, competent indeed to the discharge of episcopal duties, every where in the christian church, and by virtue of his holy office, his episcopal acts valid for spiritual purposes, but irregular, unless performed in each diocese with the consent of its diocesan. In that situation, the consent of bishop Provoost was necessary to the regularity of his acts, even where their validity resulted from his spiritual authority, and the extent in which he was authorised to discharge episcopal acts within this diocese depended for want of such regulations, exclusively on bishop Provoost’s concurrence.

In this view of the matter it is unimportant whether or not the words in the message of the house of bishops, “and with his concurrence,” apply to the regulations to be made by the church, or to the acts to be performed by the assistant bishop. It is, however, a most extraordinary notion, that an omission, whether accidental or intended, on the part of the state convention to propose regulations, shall put the diocesan in the utter impossibility of controlling his assistant, for such is their position, and it is supported by the following argument: The extent of bishop Moore’s authority is to be defined by regulations in which bishop Provoost must concur; no such regulations have been made—therefore bishop Provoost cannot concur—therefore he can do nothing—therefore bishop Moore can do every thing! But that I may not be guilty of a “palpable perversion” of the argument, I will

put it in the words of bishop Hobart himself, in his Statement.* “Now as the church in New-York have not deemed it expedient to make any regulations on the subject, there was no call on bishop Provoost for his concurrence, *there was no room for his interference* until the church of New-York deem it expedient to make regulations, defining the extent to which bishop Moore is to discharge his episcopal duties; he is left, as he has been these ten years, the unlimited exercise of them.” So there is *no room* for his interference as diocesan over his assistant, and no controlling authority growing out of that relation! Dr. Hobart is consecrated assistant to the bishops of the diocese; if bishop Provoost be one of those bishops, could not he—at any rate, could not bishop Moore, if he be the diocesan, interfere to control any act of bishop Hobart which he judged improper, by the mere force of the authority which the diocesan has over his assistant? The same authority bishop Provoost must have over Dr. Moore, until permanent and general regulations proposed by the convention shall receive his concurrence. But let me not proceed too fast, in supposing that bishop Provoost, or bishop Moore, or both bishops together, can control bishop Hobart in the exercise of his episcopal power. The latter prelate in his Statement† says, that bishop Moore will lawfully exercise complete episcopal jurisdiction in this diocese, “until bishop Provoost formally resumes it by a notification to the state convention; and then, this resignation having been grounded on indisposition, the resumption must be founded on such restoration to health, as to admit of the exercise of general jurisdiction, *and will be subject to the regulations of the convention; otherwise the complete jurisdiction will rest in the “assistant bishop,” to whom bishop Moore has delegated it.* Bishop Provoost, even admitting him to be diocesan bishop, has no right to interfere *in any particular case*, to arrest or to annul any proceedings of bishop Moore *or the assistant bishop*, canonically began or completed.” The reason why bishop Provoost can only resume his episcopal jurisdiction by a formal notification to the state convention I

* See p. 41.

† See p. 15.

confess I have never learnt. His right of resumption, if he have it, can depend only on the invalidity of his resignation; the invalidity of his resignation (if it could be made) depends partly on the incompetency of the state convention to meddle with it. If his resignation was not complete and effectual, where is the necessity of any resumption? if it was complete and effectual in itself, how can he resume at all? or if he can, why must he notify that resumption of his authority to a body which could have nothing to do with his resignation? Why not resume it by a pastoral address to his diocese, or by the explicit exercise of his authority? The convention only meets occasionally, and at distant times; the necessity for his interference, and for the exercise of his authority may well be (as it was in this case) urgent, and not admitting of that delay. Neither canon nor principle impose this restriction: but the chief mischief of this paragraph arises from its other positions, that the resumption must be of all the jurisdiction, grounded on his restored capacity to exercise it all, subject to regulations of the convention; and that the diocesan has no right to interfere in any particular case to arrest or annul the proceedings of the assistant. It must be confessed, that this doctrine is admirably well calculated to meet the views, and satisfy the ambition of an assistant or junior assistant bishop, to whom complete jurisdiction has been delegated. The principle must also apply to a resumption by bishop Moore. An assistant was given to him in consequence of an application to the state convention, grounded on his indisposition; the exercise of it must be resumed, therefore, with the same solemnity, by a formal notification to that convention, "must be founded on such restoration to health, as to admit of the exercise of general jurisdiction, and will be subject to the regulations of the convention; *otherwise the complete jurisdiction will rest in the assistant bishop to whom bishop Moore has delegated it.*" And the diocesan (and of course his assistant) has no right to interfere in any particular case, to arrest or to annul any proceedings of the assistant to the bishops, canonically begun or completed. If the junior assistant bishop has made his party good in the state convention, his situation is tolerably comfortable; the resumption by his superiors must be subject to the regulations

of the convention. The necessity for that must not be supposed to arise out of the message of the house of bishops, and to be only applicable to bishop Provoost's case; for although that venerable body directed bishop Moore's discharge of the episcopal duties to be dependent on such regulations, they laid down no such rule as to the exercise of them by his diocesan, bishop Provoost. The necessity of those regulations must grow out of something else; I know not what, except it be that the state convention is bishop Hobart's *factotum*. But even without those regulations, which ought more properly to be called restrictions or prohibitions, the junior assistant would be tolerably supreme, if the position be true, that his superiors can interfere in no particular case, but must resume the whole general jurisdiction, and must first be restored to a competent state of health for its exercise. Under this position I wonder how bishop Moore could legally meet his presbyters, even to try or suspend Mr. Jones, after a complete delegation of the episcopal authority to his assistant—but let that pass. The infirmities of age and sickness render the resumption of general jurisdiction almost impossible, and no individual acts of error, partiality, hatred, tyranny, or injustice, would probably induce either of the senior bishops to resume the burthen of general jurisdiction. The junior assistant bishop is, then, practically and uncontrollably the diocesan, while his superiors are *both* cyphers! An assistant is no assistant, but a *supplanter*. Perhaps, however, the position may not be sound. An assistant may be extremely competent for the general management of the diocese; but particular cases may arise in which his prejudices, his affections, his weaknesses, his dislikes, his singular and erroneous notions may require to be curbed and guided, or in which oppressed individuals may stand in need of an appellant authority; the diocesan, though unfit, from bodily infirmity and age, to undergo all the labours of general jurisdiction, may be perfectly well able, in such cases, to guide, to curb, and to protect. Where then is the propriety, necessity, or canonical rule, when particular cases, and only such, require his interference, that he should be disqualified from giving it, unless he will also undertake the exercise of all the duties, to which

he is personally unequal, and which do not require that interference? Bishop Hobart, in his Statement* attempts to assign a reason for this position. "If the diocesan bishop may *capriciously assume* jurisdiction, in whatever way, and at whatever time he pleases; if he may assume this jurisdiction in a *particular* case, contrary to the will of the coadjutor, while he is incompetent, as at the first, to the exercise of *general* jurisdiction; and especially, if in a case regularly begun, or finished by the coadjutor, he may interfere to arrest or annul the proceedings, there is an end to all order, and all system in ecclesiastical proceedings; the source of episcopal ministration becomes uncertain; and the clergy, and the people of the diocese, will be doubtful whom to obey—the diocesan bishop or the coadjutor." Not to dwell on the decorousness of the expression, "*capriciously assume*," as applied to a diocesan, I shall remark, that it is, perhaps, only in particular cases, regularly begun or finished by the coadjutor, that the interference of the diocesan against the will of that coadjutor, and to arrest or annul his proceedings, can ever be requisite; and then that interference is not only required by justice, but consistent with order, and in perfect harmony with the system of ecclesiastical proceedings in our church; it then ascertains and makes manifest the source of episcopal ministration—and neither the clergy nor the people of the diocese, (if they know the first principle of our church discipline, submission to rightful superiors,) can be doubtful whom to obey: they will obey the coadjutor, when he is not opposed or controlled by the diocesan—they will obey the diocesan whenever he appears and acts.

I believe I may now venture to assert that the bishops, whom bishop Hobart was consecrated to assist, can control him, because he is only their assistant, without any general resumption of authority or regulations by the state convention, and from thence to infer, that although no regulations have been made by that body, bishop Provoost for the same reason, may control his assistant, bishop Moore, and arrest or annul such acts as meet his disapprobation, and to which he thinks

* See p. 12.

fit to withhold his concurrence. The acts of bishop Moore as under the 32d canon, in this case are emphatically of that description. They were not only without his concurrence, but even, in direct opposition to his known will and opinion. His non-concurrence was made the ground of a protest by Mr. Jones, and of another by Drs. Harris and Moore and Mr. Feltus. After the proceedings of the 5th of November were made known to him, he declared them totally unauthorized by the constitution and canons of our church, and not sanctioned by the principles of our religion or humanity. This was made known to bishop Moore and his presbyters the next day, and they immediately afterwards, proceeded to enforce and consummate their proceedings, by suspending Mr. Jones, whom bishop Provoost, as the diocesan, had advised to disregard them.

But whatever competency bishop Moore may have acquired, under the message of the house of bishops and his subsequent consecration, to the discharge of *episcopal duties*, the convoking of the presbyters by the bishop of the diocese, and acting under the 32d canon, are not performances of episcopal duties within the technical meaning of the expression, or in the sense in which it was used by the house of bishops. Bishop Moore was consecrated in 1801; this canon was made in 1804, with the knowledge of the actual existence of an assistant bishop in this diocese; and yet the power by the canon, is markedly given to *the bishop of the diocese*.

By the words "episcopal duties" both in the message of the house of bishops, and in the regular ecclesiastical acceptance, are meant those duties, which none but a bishop can perform. The duties under this canon are clearly not of that description, for the canon itself provides that they shall be performed, if there be no bishop, *by the convention, or the standing committee of the diocese*; and although my learned adversaries have contended that the state convention is the metropolitan, I do not know that they have yet claimed episcopal authority for the standing committee. Indeed the canon clearly shows what it considers as an episcopal duty: although the convention or the standing committee may proceed to prescribe the terms on which the connexion between the clergy

man and the congregation shall be dissolved; yet, if from refusal to comply, coercion should become necessary, the convention or standing committee, shall, *with the aid and consent of a bishop*, suspend the clergyman, or exclude the congregation from the convention; that is wherever jurisdiction is to be exercised, an *episcopal duty* is to be performed, and then, *the aid and consent of a bishop must be procured*; but until an exercise of jurisdiction is called for, the aid of a bishop is not in itself indispensable; and until then the duty does not become episcopal. I have already frequently observed this canon should be most strictly construed; but here strictness of construction is scarcely necessary; for the intention of the law-makers is obvious. Whenever it should become necessary to dissolve the connexion between a minister and his congregation, as it ought to be done with the greatest caution and watched with the greatest jealousy, it shall only be done under the immediate superintendence of the *highest ecclesiastical authority in the diocese or state*, be that episcopal, or otherwise: and that highest ecclesiastical authority, shall, when necessary, proceed as far in enforcing the canon as it can, according to the rules of our church: if that highest ecclesiastical authority be diocesan, he shall enforce the canon by every requisite act of jurisdiction; if it be only the convention or standing committee, they shall proceed as far as they can, until the exercise of jurisdiction become necessary, and then they must obtain the aid and consent of a bishop. By the bye, this regulation, that the convention must obtain the aid and consent of some bishop, is not very consistent with its pretensions to inherent metropolitan powers and jurisdiction. I repeat then, that whatever competency bishop Moore, or any other assistant bishop may have to perform episcopal duties at large, wherever there is a diocesan, this canon according to its own express provisions and true meaning, can only be carried into effect by that diocesan, he alone being, *the bishop of the diocese*.

The next thing to be observed on the 32d canon is that the bishop shall summon *his presbyters*; by these words must be understood *all his presbyters*, because any other construction of them leaves every thing afloat. I say it with respect,

but it is an observation that should not be withheld, all the presbyters ought to be summoned; for otherwise, if the bishop can summon those only whom he pleases, an improper feeling on his part may easily be indulged, and a facility is given to him of oppressing a pastor. Dr. Bowden indeed in his evidence,* thinks differently, and assigns his reasons: "deponent thinks that as by the canon, eight presbyters are sufficient to try a clergyman on a criminal charge, that number would be sufficient in the case of the plaintiff." From the manner in which the proceedings against Mr. Jones have been conducted, and the reasons assigned for them, I am almost tempted to exclaim, how little do these churchmen know of the principles, on which justice should be administered! Eight presbyters are sufficient to be summoned for the trial of a clergyman under the canon, and therefore are sufficient in the case of Mr. Jones! The canon alluded to by Dr. Bowden, is the 2d canon of our state convention, "it provides among other things, that for the trial of a clergyman the bishop shall nominate eight presbyters, out of whom the person accused may choose five, or if he neglect or refuse to do this, the bishop shall appoint five, who shall be constituted a board for trying the accused person." In this canon, then, there is a compensation to the accused, for summoning only eight presbyters; he can select five of them, and set the rest aside. Was Mr. Jones permitted to select Dr. Moore, Dr. Harris and Mr. Feltus, who protested against the proceedings, Mr. Haskill who voted against them, and Mr. Elias Cooper, who, as Mr. Haskill testifies,† "has expressed a regret for the part he had taken at that meeting, on the ground of the proceedings, having been hasty and more severe against the plaintiff than the nature of the case would justify." Was Mr. Jones, though he protested against them, permitted to strike off, and set aside the prejudiced, the intemperate, the partizan, the slanderer, the personal enemy? If he could not get rid of *these*, is the ingenious analogical reasoning of Dr. Bowden sufficient to establish the position, that the bishop could summon any eight of his presbyters at

* See page 245.

† See page 129.

discretion, by whom, without exception or challenge, my client's character, office and fortunes must be passed upon. If he could not get rid of any presbyter, however violent or obnoxious, his only safe protection could lie in the multitude of his judges. Having them *all*, he might hope that the combinations or malignity of enemies might be controlled and restrained by the weight and number of impartial men. These considerations do not seem to have occurred to those who regulated the proceedings against Mr. Jones; but it is a truth, and I regret to see it, the study of divinity or belles lettres, does not always fit the mind for doing practical justice, or perceiving what it is.

On principle, therefore, as well as on the words of the canon, which remember must always be strictly construed, the bishop should summon all his presbyters; we say at least five of them were omitted. But the opposite counsel contend that those five, although presbyters, and having the charge of congregations in the diocese, are not the bishop's presbyters, because not being regularly inducted, they have not seats in the state convention. To prove this, they cite the 3d article of the ecclesiastical state constitution; "the convention shall be composed of the officiating ministers, being *regularly* admitted and settled in some church within this state, which is in union with this convention." And to explain what is meant "*regularly* admitted and settled" they cite part of the 29th general canon. "No minister who may hereafter be elected into any parish or church, shall be considered as a regularly admitted and settled parochial minister in any diocese or state, or shall as such, have any vote in the choice of a bishop, until he shall have been instituted according to the office prescribed by this church." From all this they infer that none but instituted clergymen are to be considered as presbyters. This doctrine is repudiated by Mr. Wilkins,* "he considers a presbyter in this state, is one who is settled in a parish in this state, and is under the jurisdiction of the bishop. A priest who is settled in a parish, is under the jurisdiction of the bishop, although not instituted,"

* See page 241.

and again,* “ he thinks that a person settled in a parish, although not instituted according to the canon, would be entitled to a seat in a convocation, if called on by the bishop; and he thinks it is incumbent on the bishop to summon to a convocation, a person so settled.” Even Dr. Bowden considers the rule which the opposite counsel insist upon as *stricti juris*, only a mere matter of propriety, to guide the discretion which that gentleman thinks the bishop possesses, of summoning only such of the presbyters as he may judge proper, and omitting whomsoever he pleases. He says,† “ that in cases where any authoritative act is to be done, deponent thinks that the distinction prescribed by the canon, in reference to seats in the convention, *as a matter of propriety, would be proper to be observed.*” But if the definition of the bishop’s presbyters given on the opposite side be correct, that they are those priests who have been regularly instituted into a parish or church of the diocese according to the institution office, what becomes of Dr. Bowden himself, who sat in the convocation? He says in his own evidence,‡ that he was not settled in a parish; then according to the definition, he was not one of the bishop’s presbyters.

MR. WELLS. We say it is the duty of the bishop to summon all presbyters who are entitled to a seat in the convention, and Dr. Bowden was entitled to such seat, as a professor in Columbia College.

MR. EMMET. The definition did not come from that gentleman; Mr. Ogden expressly laid it down, and I noted his words, that no one was a presbyter within the meaning of the 32d canon but a priest regularly instituted into a parish or church. I do not, however, mean to catch at words:—Dr. Bowden is not one of the bishop’s presbyters within the meaning of that canon. He is indeed a priest resident in the diocese, but he has no ecclesiastical situation under the bishop, and is not therefore, properly speaking, within his jurisdiction; which is certainly necessary to constitute a bishop’s

* See page 242. † See p. 242, 243. ‡ See p. 245.

presbyter. He has indeed a seat in the convention; but that he does not enjoy in right of his being a presbyter, he has it because he is a clergyman, and a professor in Columbia College. By the 3d article of our ecclesiastical state constitution, three kinds of clergymen are members of the convention, ministers regularly admitted, and settled in some church within the state, in union with the convention; clergymen employed as missionaries under the direction of the convention; and clergymen engaged as professors or instructors of youth in any college, academy, or general seminary of learning duly incorporated. As to the first description, ministers settled in a church, the 29th canon* enacts that they shall not be considered as regularly admitted and settled, until they shall have been instituted according to the office prescribed by the church: the letters of institution extracted from that office,† as also the 29th canon itself, shew, that to be instituted, the minister must be a priest, that is a presbyter. No such regulation or canon has been made with regard to missionaries or professors. Clergymen in deacons orders, and in either of those situations, would, therefore, be entitled to sit in the convention. The right then of sitting there, is, in no respect, connected with his character of presbyter, and that which gives him such right, does not place him, properly speaking, under the ecclesiastical jurisdiction of the bishop. He might therefore be well entitled to sit in the convention, without having a single requisite for his being one of the bishop's presbyters. Indeed there are very strong equitable reasons arising out of Dr. Bowden's situation, why he should not be called upon to act under the 32d canon: those required to dissolve a pastor's connection with his flock, and in some sort to try and punish him, should be his peers, not only in rank, but in condition; they should have a community of feeling and of general interest with him. A professor in Columbia College has no such community: his talents and wisdom may be extremely useful in a legislative body, which is to make laws for the church, in which he must feel a lively interest; but his situation is alien, and disconnected

* See p. 18.

† See page 18.

from that of a priest settled in a church: he can have no apprehensions, lest a quarrelsome, capricious, or practized upon congregation or vestry should ever seek to deprive him of his bread, and turn him destitute upon the world. On the contrary, those presbyters, who, though not actually instituted, are settled in parishes, have that community of feeling and general interest: they are in every necessary point the peers of the pastor, who is sought to be displaced; with the priesthood on their heads, and the bishops jurisdiction over them, they are most emphatically his presbyters. They might be summoned on the trial of a clergyman and could act, although they have not seats in the convention: why then are they disqualified from sitting on the arbitration, directed by the 32d canon? There are no words of exemption, and I have no doubt that it meant to include every presbyter under the bishop's jurisdiction. Five gentlemen are named by Dr. Bowden,* who were at that time settled in the diocese as presbyters, but had not been regularly instituted: they had every legal requisite for acting under the canon, and were peculiarly fitted for being arbitrators in this cause, as they never interfered in any of those disputes, or made themselves parties in this controversy. The opposite counsel have said that those gentlemen entertain the same opinions with those who sat in convocation; on what part of the testimony, or what facts out of the testimony is this assertion founded? I confess I doubt it, without pretending to know their opinions; this however I do know, that they have all kept themselves aloof, and have never yet joined in certificates, cabals or combinations against the plaintiff.

But arguing on the principle, that the bishop had a discretion whom he should summon from among his presbyters, let us see how it was exercised. I have already stated, that five, who had never committed their judgments, by any act or expression, were totally omitted. Who then were summoned? Dr. Harris, in his testimony† says, that in June 1811, (at least four months before,) "Bishop Moore exhibited to the deponent a list of the clergy, who at a meeting of

* See page 243.

† See p. 128.

the special convention in May preceding, had recommended that measures should be taken for the separation of plaintiff from Trinity Church. The deponent recollects to have seen the names of Mr. Howe, Mr. Bowen, and Mr. Nash, and as he believes, Mr. Phelps, to that paper; and there were in all about a dozen names, but he does not remember any other." It appears, then, that of those summoned, almost all must have prejudged his cause; and that this was long previously known to the very officer, upon whose discretion it depended who should be summoned. But it was not by this recommendation alone, that these presbyters had manifested their prejudices in this cause. Mr. Henry Rogers was compelled, on his cross examination,† to prove, what had indeed been abundantly proved by others, as to them, and on several occasions, "that he has had repeated conversation with Mr. Howe on the subject of the plaintiff; he has heard him use *very strong expressions*, as applied to the conduct of the plaintiff; and he thinks he has heard Mr. Howe say, that the plaintiff had behaved in this transaction, *as a rascal or a scoundrel*, or other equivalent expressions." As this was calculated, by the grossness of the language from a divine, to bring his intimate friend into no small discredit, and even to excite disgust against him, Mr. Rogers probably thought to alleviate the evil, by placing him in good company, and he went on:—"He never heard a clergyman speak of the aforesaid conduct of the plaintiff, but in terms of strong indignation." Another question brought out this reply, "The clergymen whom he has heard speak on this subject, and to whom he refers, are Mr. Bowen, bishop Hobart, Mr. Berrian, Mr. Lyeil, and he thinks, Dr. Bowden." As to the time of holding this language, he says, "he cannot be particular as to the times when he had conversations with any of the aforesaid gentlemen, on the subject of plaintiff's book; but he thinks it probable, that he did converse with some, or all of them, within three months after the publication."

In the month of August, bishop Hobart published his letter to the vestry, with an appendix by Mr. Howe. In that let-

† See p. 215, 216.

ter are published a number of certificates, manifestly shewing the strongest bias against Mr. Jones, in the minds of those from whom they proceeded. Among them are, Mr. Prentice, Mr. Bulkley, Mr. Reed, Mr. Wilkins, and Mr. E. Cooper. What then is the fact? That the very men who had recommended to bishop Moore the plaintiff's removal from his livelihood; who had distinctly marked their zeal and opinions against him by their certificates; who went through the city rousing against him the passions and prejudices of the congregation; or at least, publicly giving vent to their own: These, and almost only these, were summoned to be his judges; but above all, the active advocate—the enlisted pamphleteer—the vehement and scurrilous abuser—the man so deeply embarked in the quarrel, that several of the witnesses have, on their oaths, declared him to be one of the real parties to it. The man, whose zeal in conducting it to the desired conclusion, never flagged; and the extent of which, at that time known to all his acquaintances, may now be measured by you from this circumstance: that for twenty days of tedious examination, he never absented himself a single instant; and even laying aside his clerical character, he acted as the counsel of the defendants,* and examined witnesses in the cause. Even he, was not omitted by the person, who it is contended had a discretion to omit whom he thought fit! But it is said, those who were known to be friendly to Mr. Jones were also summoned. Yes—in truth, Dr. Harris, Dr. Moore, and Mr. Feltus were summoned; but to have omitted Dr. Harris, rector of St. Mark's in New-York, and president of Columbia College, and Dr. R. C. Moore, rector of St. Stephen's, also in New-York, and two of the oldest presbyters in the diocese, or Mr. Feltus, rector of St. Ann's, Brooklyn, near the city, would have proclaimed the character of the transaction with a thousand tongues. I freely admit the summoning of them was a homage done to decency: but they were only three—and those whose opinions were ascertained, and whose names are actually disclosed in

* See p. 210, 213.

the evidence and documents, are at least eight. The homage to decency, therefore, does not seem to have been unsafe.

The presbyters thus selected and summoned, met on the fifth of November, 1811. Did they then deliberate on the merits of the controversy, or on the other matters before them? Oh no!—A previously drawn and ready engrossed instrument, was produced, without a single blank to insert the result of a single deliberation, or a single incident that might occur in the course of the meeting! Look at the original instrument in your possession, and you will perceive it never had a blank of any kind. How did this monstrous thing happen? I request the arbitrators to suppress their indignation while I state it. There was a meeting in the October preceding, of those very presbyters, I believe all, except Dr. Harris, and Dr. Moore, Mr. Haskill, and Mr. Feltus. From *them, and from Mr. Jones* it was kept a profound secret; but as Dr. Bowen confesses,† Mr. King, one of the prosecutors on the part of the vestry, was sent for and consulted. It was there decided, that Mr. Jones should be separated from Trinity Church; and that the compensation for his removal should be one thousand pounds. After this secret conclave had decided, (for reasons which will be hereafter shewn,) summonses were issued for the meeting in November, and there, the ready prepared instrument of award was produced, without even a blank for the sum of compensation; and it was signed without any deliberation, by all but Dr. Harris, Dr. Moore, Mr. Feltus, and Mr. Haskill! I have stated that this meeting was kept a profound secret—it was; but the indiscretion of Mr. Lyell blabbed it; otherwise it never would have been known. He stated it to Mr. Stuyvesant‡ “some time in the month of October 1811; and as he believes, in the early part of that month, he had a conversation with the reverend Mr. Lyell, in which he told dependent, that the bishop had shortly before that held a convocation of his presbyters, to decide on the case of the plaintiff, under the 32d canon; and that the convocation had deter-

† See p. 236. ‡ See p. 126.

mined, that a separation should take place; that the vestry were to pay the plaintiff his salary, and one thousand pounds; that after that determination, Mr. Harison informed them, that their proceedings had been irregular; that Mr. Jones ought to have been summoned to appear before the convocation—and Mr. Lyell added, that Mr. Jones had been, or would be summoned to appear before the convocation that would be summoned for the 5th November, then next, *when they could make the same decision.*” From this information we ascertained the fact: but more than this information we never could obtain, till the examination of the witnesses had considerably advanced. Let me mark out the pains that were taken to keep it concealed. We examined Mr. Haskill, Dr. Harris, Dr. Moore, and Mr. Feltus, whether they were summoned to, or attended any meeting of the presbyters in October 1811: they all answered in the negative. To make this non-attendance at the convocation seem to be their own act, and their own neglect, interrogatories were put to them. I must be permitted to say, on the suggestion of the reverend Mr. How, who acted as one of the counsel for the vestry, who never was an instant absent, and constantly communicated with and suggested to his associate counsel: the object of these interrogatories was to make it appear, that the meeting in October, was an ordinary regular convocation, such as is always held at the bishop’s the evening before the convention, of which they had notice, and which they might, therefore, well have attended. This will sufficiently appear from the answers, as they were reduced to writing. Dr. Harris says, § in answer to one of these questions, “it is usual for the clergy to meet at the bishop’s in convocation the day preceding the sitting of the convention.” This produced an examination on our part, in which he said, || “the deponent has no recollection of any notice having been sent to him to meet a convocation immediately preceding the convention in October 1810—he did not attend such convocation; and he thinks, if he had received such notice he would have attended; and the notice to attend such convocation, which is usually held

§ See p. 144.

|| See p. 146.

the evening before the convention, is generally noted in writing at the bottom of the notice of the meeting of the convention; the deponent attended the convention in October 1811." To raise the presumption that he must have received a notice to attend the convocation, Mr. How caused him again to be questioned—and he answered, "that he does not think that he would have attended the convention in October 1811, without he had received either a written or a verbal notice to attend. It is the uniform practice for the clergy to meet in convocation at the bishop's the evening preceding the meeting of the convention, and has been so ever since he has been in the city of New-York; and knowing that there was to be a convention in October 1811, he must necessarily have supposed, that there was a previous convocation." Misled by this course of examination, and really believing that this was the meeting of which we had been informed, we again questioned Dr. Harris, why he did not attend—he answered,* "that he would not have attended the meeting of the convocation preceding the convention in 1811, unless notified, under the particular circumstances that then existed." Mr. Feltus was questioned on the same subject,—but his answer quickly ended the enquiry.† "Witness had a notice to attend a meeting of the convention in October 1811, but no notice subjoined to it, as is usually done, to attend a convocation the evening before at the bishop's, and did not suppose that there was a convocation or meeting of the presbyters at the bishop's that evening, because he received no notice." Dr. Moore also answered,‡ "that he did receive a notice to attend the convention in October 1811, but that no notice to attend a previous convocation, as is usual, was annexed thereto; from which the deponent inferred, that bishop Moore was out of town." In this way it was attempted to give evidence, as if the convocation was that regularly and usually held the day before the meeting of the convention, when it might have been presumed, that every presbyter who chose, would be there. But, on the cross-examination of Mr. Lyell,§ and not before, we learned that it was a convo-

* See page 147. † See p. 149. ‡ See p. 160. § See p. 242.

ocation held the *day after the closing of the convention*—of which, no kind of notice had been given, except to those whose presence was desired; and which was especially held to settle Mr. Jones's affair, in the absence, and without the knowledge of himself, or any one that would probably befriend him; but in the presence of Mr. King, on behalf of the vestry, as Dr. Bowen's testimony afterwards, and for the first time disclosed. Need I make a comment on the endeavour to extract from the ignorance or forgetfulness of witnesses examined on oath, in a course of justice, evidence of a fact, which must have been known to be false to the reverend lawyer, who himself was present at the meeting in October, as admitted by Dr. Bowen; and who must, therefore, have known that it was held, as the same gentleman testifies,* *at twelve at noon—and the day after the convention*, as admitted by Mr. Lyell: and not *the evening before the convention*, as suggested by the questions put to Dr. Harris.

Yes, in that concealed and secret conclave, to which not a friend of Mr. Jones had been previously summoned, his doom was sealed:—it was decided to deprive him of his bread, and insult him with the offer of a despicable pittance; a mockery of compensation. And this would, it appears, have been the final meeting, if Mr. Harison had not informed them, that it would be better to summon Mr. Jones; and perhaps, as Dr. Bowen heard, also the four that were omitted, as they had seats in the convention. What, then, becomes of the boasted liberality displayed in summoning those four, who were favourable to Mr. Jones? It was intended to conclude the business without their participation or knowledge; and only, that the reverend actors in this transaction had been warned by a layman, and a lawyer, they would not have paid even that homage to decency. But if the decision of that meeting was not intended to be final, as Mr. Lyell seems to insinuate, what then was it intended to be? In that case, the meeting could have been nothing but an assembly to prejudice, to commit each to the other for his opinions and conduct; to combine, and to conspire, in order,

* See p. 238.

that at the ulterior meeting, neither the presence of Mr. Jones himself, nor his arguments, nor the presence or arguments of the absent presbyters, should alter an iota of the previously arranged decision. But whether it was to have been conclusive or preparatory, it is no matter; for, in November, "they could make the same decision."

And in November they did make the same decision: the ready drawn instrument, was accidentally forgotten. Mr. Haskill states,* that "the meeting was detained some time; and as the deponent understood, until an instrument of writing, which was searched for in the room, and afterwards sent for, and brought in, as he believes, by Mr. Lyell; which paper was afterwards signed by bishop Moore, and a number of the presbyters." It was signed by them, though false in its statements, and entirely unsuited to the contingencies that had occurred. Mr. Jones, it appears, by the testimony of Mr. Haskill, Dr. Harris, and Mr. Feltus, never entered into the merits of his defence, but protested against the proceedings on the grounds already laid before you; the instrument,† says "the said Cave Jones, appeared, and was by us fully heard in relation to the said controversy." Dr. Harris, Dr. Moore, and Mr. Feltus, also protested; but no notice is taken of it in the instrument. Mr. Haskill also voted against the proceedings: but it is made to appear, as if no presbyters had been assembled, but those who signed their names, and concurred in the sentence. Now, let me seriously ask, would the supreme court, in any common case, permit an award to stand, respecting which, it had been indubitably established, that some of the arbitrators, in the absence, and without the knowledge of the rest, had convened together, and having also concealed their meeting from one of the parties in the controversy, had sent for the other, or his active agent; and having communicated with him on the matter in dispute, had then determined on their decision in all its particulars; that they afterwards fixed on another meeting, to which the rest of the arbitrators and the excluded party were summoned, and there executed a ready prepared award, ex-

* See p. 128. † See p. 8-

actly corresponding with what had been previously and secretly agreed upon: those arbitrators who had not been parties to the previous meeting, entirely dissenting? If the persons against whom these facts had been proved, were only merchants, lawyers, or mechanics, would you think the advocate transgressed his duty, or indulged an improper warmth, if he arraigned in terms the most pointed and severe, the profligate iniquity of such proceedings? Would you sit patiently on your seats, and hear him argue at length, that there can be no vice in an award, more signal, more contaminating, or more fatal? Would you not interrupt him, and assure him, that while you filled the seats of justice, you never would permit such an abominable outrage against it to disgrace the community in which we live?

But before the atrocity was consummated, Dr. Moore attempted to dissuade his fellow presbyters, by an address, which will recommend itself to the serious attention of the arbitrators.* He is repeatedly interrupted, and at length forced to desist. In excuse for this, it is urged, that his address was irrelevant, that it went into the merits of the controversy between Dr. Hobart and Mr. Jones, and into a justification of the latter for publishing the Solemn Appeal. Was that irrelevant when addressed to the presbyters? were they not to decide the same matters that are now submitted to you? If topics of that kind were improperly urged before them, what is the character of all that has been addressed to you by both the opposite counsel, on the subject of compensation? What was that eloquent, but ill founded phillipic against Mr. Jones, to which you listened yesterday with riveted and fixed attention? Has it in truth no connexion with the questions first submitted to the presbyters, and now to you, to enquire whether Mr. Jones "first disturbed the peace of our Zion," whether he acted from paltry suspicions and pitiful envy? Was all this mass of abuse an invective brought into the opposite argument, without any fair applicability? If this style of argument was not irrelevant when used to you, could the vindication from it, be improperly brought be-

* See page 164—170.

fore those, who were to decide the same things that you are? Were not they to consider the terms on which the connexion should be dissolved? And if you should be induced to retain it at its present amount, on account of that publication or any misconduct of Mr. Jones, in the early, or any part of the disputes, which made the vestry interfere; was not Dr. Moore well authorized to lay before his fellow presbyters his reasons for thinking Mr. Jones had done nothing wrong in publishing, or in any part of his early conduct? The nature of the irrelevancy is, however, pretty clearly to be inferred from a fact testified to by Mr. Feltus,* and Dr. Moore.† Mr. Lyell, in one interruption, said this was not the point to come before them, *that had been fixed*;—then turning to Dr. Moore he said, *but you were not there*. The irrelevancy was discussing what had been previously arranged in a secret meeting; and it shews how firmly the decision was, in all its parts, considered obligatory on those who had attended that meeting, and how little they were open to reconsider any of its arrangements, when Mr. Lyell could get up in convocation, on a formal investigation in the nature of a trial, and without an universal murmur of disapprobation; without the disclaimer of a single individual, interrupt one of the judges, delivering his opinion, by the remark, “that is not relevant Dr. Moore—that has been decided,—Oh no, you were not present.”

But it is said Dr. Moore spoke against bishop Moore—where? I have carefully read the address, and cannot find the paragraph; he was indeed interrupted in one part, where he was stating an hypothetical case of a bishop, which if it could have had any application to an existing bishop, could never with propriety, be applied to him. No, whatever were the pretences, whatever were the complaints of invective and abuse, which, if they had been used, were but too well merited: whatever were the alleged irrelevancies, which were only so, because they touched upon what had been previously decided, a perusal of this address will clearly shew that the interruptions were only to preclude deliberation, and to prevent an useless

* See page 149.

† See page 156.

and disagreeable waste of time, in listening to arguments against what was irrevocably fixed upon.

The decision of the presbyters, was handed to Mr. Jones at about 7 o'clock in the evening, and he was allowed till about ten the next morning, to decide on an act, which would fix the miseries of his family! Those who limited this time must have counted on causing to him, a sleepless, anxious night. Trinity Church indeed might well answer the next day, having had a month's previous knowledge of the decision; but my client was to answer in a few hours whether he would accept a mean and pitiful compensation for being driven into the world, blasted and ruined, with a stigma on his character; or submit to the ecclesiastical punishment, of suspension from the exercise of his functions!

Mr. Depeyster in his evidence,* says, that "of the presbyters who sat on the question between the plaintiff and the vestry of Trinity Church, all except two or three, had received aid, or were in expectation, directly or indirectly of aid from the said vestry." It is the misfortune of our episcopal communion, that most of its ministers are dependent on that corporation, and the dangers of that dependency were illustrated on this occasion. Dr. Harris, Dr. Moore and Mr. Feltus protested against the proceedings, and Mr. Haskill voted against them. The suppression of Dr. Beach's deposition prevents me from comparing the subsequent conduct of Trinity Church towards Mr. Haskill, with that toward Mr. Judd, who had voted in their favour. The testimony in the cause, however, enables me to speak of Dr. Harris; he it seems, was no longer a fit object for their bounty. He had received from them, for some years before, a gratuity of five hundred dollars annually, his income from St. Mark's being far from considerable. Mr. Depeyster states,† "that an annual donation of five hundred dollars, which had been paid to Dr. Harris for several years, was stopped after the protest of Dr. Harris to the proceedings of the presbyters, and the deponent has not a shadow of doubt that the said allowance was withheld in consequence of Dr.

* See p. 118.

† See p. 119.

Harris having made the said protest, and the dignified stand he took with the plaintiff in the controversy between him and Dr. Hobart and Mr. How; and because he would not join in the prosecution and persecution of the plaintiff by those gentlemen, and would not bow to those gentlemen." In excuse for this act, it is alleged to have been done, because he had recently been honoured with the situation of president of Columbia College, having a salary of five hundred dollars a year; and Mr. Clark and Mr. Laight have been examined to prove that this reason was assigned in the vestry for discontinuing the gratuity. Mr. Laight says that it was the reason of his vote. I have no doubt of it, and only regret that he was the dupe of such a pretext: in proportion as he lives in the world, he will learn that men seldom assign a motive they are ashamed of, for an act they wish to do; it is little difficult to find a plausible excuse to justify a favourite measure. May I be permitted to say frankly with Mr. Depeyster, that though it may have influenced Mr. Laight, I do not believe it was the reason of the vestry; if it were, it would at least show a determination on their part that he should derive no additional comfort or ease of circumstances from the respect of his fellow citizens, or the more intense application of his time and talents. But another circumstance sufficiently developes the motive for this act; it is proved by the testimony of Mr. Jarvis;* and that I may not misrepresent it, I will give it in his own words: "The deponent says that prior to good Friday, in the year 1812, he was in the habit of exchanging pulpits with Dr. Harris, and did exchange with him on that day; soon after which the deponent received an intimation from Dr. Bowen, that the deponent's exchanging pulpits with Dr. Harris was not approved of by bishop Moore. The deponent requested Dr. Bowen to ask bishop Moore to make a communication on the subject to the deponent in writing. Some short time afterwards, Dr. Bowen requested the deponent to call and see bishop Moore, which he did, and received from bishop Moore a written communication, a copy of which he afterwards sent in a letter to

* See p. 171.

Dr. Harris, a copy of which letter is now produced, and hereunto annexed. In consequence of receiving the aforesaid communication from bishop Moore, the deponent did abstain from exchanging pulpits with Dr. Harris. In the interview aforesaid, between bishop Moore and the deponent, bishop Moore asked the deponent whether he knew that Dr. Harris had protested against his, bishop Moore's authority, and the deponent answering that he heard such protest had been entered, but that he had never seen it, bishop Moore showed the deponent a paper signed by Dr. Harris, which deponent understood to be the protest entered by Dr. Harris and others, to the proceedings of bishop Moore and his presbyters in the business of the plaintiff. The deponent says that he understood Dr. Moore and Mr. Feltus had signed the aforesaid protest, and he therefore considered himself equally bound, by the aforesaid written communication, to abstain from exchanging pulpits with those gentlemen." Indeed he was right, for the bishop's order is as follows :

“ *New-York, April 27th, 1812.*

“ This is to certify, that I think it improper for Mr. Jarvis to invite any of the clergymen who have protested *against the authority of the church*, to officiate in his pulpit.”

Signed

BENJAMIN MOORE.

Protested against the authority of the church, because they protested that bishop Provoost was the diocesan ! as if the whole authority of the church centred in the diocesan authority of bishop Moore, and none in the supreme episcopal jurisdiction of the house of bishops. But here, by one stroke of proscription, those three gentlemen are put under the ban ; they are to be excluded from professional intercourse or civility with other ministers, and as far as possible, made unpopular and disagreeable to their congregations, for an act, that, if in truth it were an offence against the authority of the church, should have received open ecclesiastical censure ; and not be punished by secret ecclesiastical intrigue. I speak of this act the more freely, because, conscientiously

I do not consider it the act of bishop Moore. His established character, before a severe visitation of Providence had compelled him to seek for episcopal assistance, forbids my attributing to him, any thing harsh or unamiable. Indeed the high sounding expression "the authority of the church," and its threadbare application, betray, to my mind, the author of the measure. But I lament it as a misfortune, casting a shade over the latter years of a venerable prelate, and strongly confirming the opinions of some of the witnesses, that he was neither fit in body nor in mind, to be present at the meeting in November 1811, when I perceive the *only episcopal acts* performed by bishop Moore, since the convention in May, 1811, were his presiding at that meeting, and suspending Mr. Jones for not submitting to its decision, and his prohibition to other clergymen of professional intercourse with Dr. Harris, Dr. Moore, and Mr. Feltus, for protesting against those proceedings. I wonder, under the arguments of bishop Hobart, in the Statement,* since the restoration of his health, does not admit the exercise of general jurisdiction, and the complete jurisdiction was delegated to his assistant, what right he had to interfere in these *particular cases*: but I suppose the impropriety was overlooked, in consequence of the convenience of his appearing as the actor, to do whatever was harsh, censurable, or unpopular.

Let me now advert to certain arguments, which to my utter surprise, have been urged to preclude you from examining into the legality of the proceedings before the presbyters,—at least, so far as relates to the authority of them, and of the bishop, and to the applicability of the canon. You have been told, that you can interfere only so far as a court of law would do, and that a court of law would not interfere to set those proceedings aside; for that, by the 32d canon, to which the plaintiff, in common with the other episcopalians assented, the bishop and his presbyters are made judges of the facts, whether differences exist; and whether they cannot be reconciled; and whether it was indispensably necessary to dissolve the connection; that they have decided

* See page 13.

all those three facts, and this is an attempt to appeal from the judges of the plaintiff's own choice, to the judges of a civil tribunal: that as to the diocesan power of bishop Moore, since there exists in this country no religious establishment, the right to fill the offices of each religious congregation must be decided by itself, and the municipal courts cannot interfere: that the state convention, which is the ecclesiastical authority of this state for the Protestant Episcopal Church, has decided the question, and that decision binds every tribunal in this state: that the bishop, having the ecclesiastical jurisdiction of our church in the state, is the proper judge who are his presbyters! and that their decision must bind the plaintiff whether right or wrong. I have delayed noticing any of those observations until I could properly collect them together, because, I think, the same mode of answering, will suffice for all; and because, they have one character—they are urged in breach of compact. I have already had occasion to refer to the correspondence between the committee of the episcopalians at large, and the committee of the vestry of Trinity church, which led to this arbitration;—I then showed that this cause was conducting contrary to good faith. Let me again resume my references, to prove the same assertion, in another instance: From the evidence,* it appears, that the committee of the vestry proposed to submit to arbitrators “all the existing legal differences now subsisting between the vestry and Mr. Jones.” To this proposal, the committee of episcopalians replied, noticing it, and marking the word “legal” in italics. They then proceed: “Permit us, gentlemen, to remark, that we have, in our letter to the vestry, already had the honour to propose to them, to submit all questions and differences subsisting between them and our constituents, (including those existing between the vestry and Mr. Jones,) to the arbitrament of independent and impartial men; if, therefore, it be your intentions to propose to us an arbitration equally extensive—that is, one embracing all the existing differences before mentioned, we hasten to communicate to you, our joyful acceptance of it:—but if you mean

* See page 130, 131.

to offer an arbitration, limited and confined to a portion of those controversies, to the exclusion of others of them, as the words *legal* differences seem to imply, then we take the liberty of requesting you to specify the particular differences or points, to which you propose the arbitration should be confined." The committee of the vestry, in answer, say,* "we used that term," (legal differences) "to designate, without a minute enumeration of particulars, those matters which we think the proper subjects of an arbitration. We intended to submit *every thing* which could properly be discussed in a court of justice, in any suit between Mr. Jones and the vestry: and the better to enable the arbitrators to make a final and satisfactory arrangement, we now beg leave, further to propose, that if they should think the proceedings heretofore had against Mr. Jones illegal, they shall then proceed to make such award, as under existing circumstances shall appear to them best calculated to do justice to the parties in difference, and to promote the peace and harmony of the church." To this the committee of episcopalians answer,† "we accede to this proposal, with the following explanations of our understanding of it, viz:—*That the arbitrators shall decide upon the legality of the proceedings and sentence of the convocation against Mr. Jones; that we shall be at liberty to impeach their validity for any cause, which the arbitrators may deem sufficient to render them invalid; that if the arbitrators shall decide that the sentence is illegal, then Mr. Jones shall retain his office of assistant minister of Trinity Church, with the usual emoluments, as heretofore; and that, if they shall adjudge the sentence to be legal, then they shall determine the terms upon which he shall resign that office.*" The committee of the vestry, replying to those explanations, say,‡ "in those explanations we concur with you, except as to one point, concerning which, we are not certain that we apprehend your meaning," and which has no relation to this matter. The committee of episcopalians closed the correspondence thus:§ "your understanding of the explanation, contained in our letter of last evening, is correct; we presume, therefore,

* See page 182. † See page 183. ‡ See p. 184. § See p. 185

that the selection of arbitrators, is all that remains to be done." Here was an unequivocal understanding and agreement that the legality of the proceedings and sentence of convocation were to be impeached for any cause; and we are now told at the hearing, that you can only do what a court of law could do, and that a court of law could not interfere with or examine the legality of the proceedings, or of the sentence of convocation; that we are not to be heard as to any matter that might impeach the validity of those proceedings, or of that sentence! Supposing the objection to have any weight, is it fair or honourable to make it? Are we to be tricked and duped in this way by the committee of the vestry, or their constituents, who are represented here? I do not mean to enter largely into any reply to this objection, because, exhausted as I am by the excessive length of this address, I must necessarily omit many things, and there is nothing I can more safely confide, without argument, to the superior talents and competency of the arbitrators than this; it is an objection, such as their judicial habits render them peculiarly conversant with. Let me, however, observe, that Mr. Jones being deprived of his salary, has brought an action for it: the defence is a sentence of a body of very limited jurisdiction, dissolving the contract under which his right of action would arise: that contract can only be dissolved by particular persons, expressly described in the instrument from which their jurisdiction is derived; and they cannot have jurisdiction, unless particular circumstances have previously taken place. Must not, then, the discussion necessarily arise, whether the persons who have undertaken to act in dissolving the contract, are in truth, those described in the instrument, under which they claim their jurisdiction; and if they are, whether the circumstances have previously taken place, without which, even they have no power to act? Must not our municipal courts always examine, whenever the matter incidentally arises, into the powers of acting, and the extent of jurisdiction, of every private body claiming to possess it? And as to the question of diocesan, would not a court of justice be obliged to consider, whether the state convention was itself a body competent to pronounce upon, or

having jurisdiction of that question, before it received their sentence as conclusive upon it? But even if there could possibly be a doubt upon this reasoning, I hope and trust the arbitration bond is sufficiently extensive to cover every thing—the action is submitted,* “and all other matters which could properly be discussed in a court of justice, in *any suit or action* between them, the said parties.” If to carry into effect the unquestionable agreement of the two committees, there be a necessity for large construction, the words of the bond will admit of it; *any suit or action* will extend to a wager, to a feigned issue, to any proceeding or proceedings, legal or equitable, in which issues could be joined to bring into discussion, any, or every one successively, of the points urged against the validity of the sentence and proceedings under the canon:—this was undoubtedly the intention of the parties, and the reason why the words of the bond are so extensive.

The only remaining question I shall discuss, is that of compensation. If I have succeeded in shewing, that from the first interference of the vestry censuring Mr. Jones's pamphlet, to the completion of the proceedings before the bishops and presbyters, the measures taken against him have been injustice heaped upon injustice; and, as bishop Provoost considered them, totally unauthorized by the constitution and canons of our church, and not sanctioned by the principles of our religion or humanity: If I have succeeded in establishing any one of the many objections, which appear to me all demonstrated, it can scarcely be necessary to enquire into the compensation awarded him by the bishop and presbyters; nor, if the most valuable principles of our municipal and of the canon law have been violated, in order to effect a dissolution of his connexion with Trinity Church, will you put us to compensation for relinquishing that connexion? If you declare those proceedings unauthorized and illegal, and therefore restore him, so far as your powers extend, to his rightful situation, as assistant minister of that church; whatever future arrangements he may make

* See p. 13.

will be voluntary, and unaccompanied with that stain upon his character, which your confirmation of the measures pursued against him, would seem to leave. Having made our views on this point clearly understood, I shall proceed with a few remarks on the compensation awarded him, and its utter inadequacy.

You could not but have observed, that the discussion of this part of the subject excited the strongest emotions of sympathy in the opposite counsel. Enlisted as they are by professional duty—bound as they are by the ties of friendship and personal attachment—misguided, as I fear they are, by prejudices and passions, artfully excited, and extensively diffused—yet, when they paused to collect themselves for the argument of this point, their mental vision caught a domestic scene of suffering and affliction, and they revolted at their office. My learned friend, who spoke last, declared it one of the most painful tasks of his life; and the starting tear, and trembling voice, bore ample testimony to the truth of his assertion. When I saw him, I confess, I rejoiced, and said within myself—his heart has spoken to our judges; now let his lips give utterance to the suggestions of his clients. But if they, if his opponents and adversaries pity him, in what manner am I to address you, who have acquired in this cause the most entire conviction, that I am defending an oppressed and injured man; and who have frequently reflected with grief and indignation, on the remorseless sentence, that was intended to cast without a crime, into distress, and, if possible, into poverty and bereavement, not only my client, but the universally respected and most interesting partakers of his fortunes?—not in language calculated to excite your pity; for it is not that which I seek or claim; but with the frankness of truth, I will complete this picture of persecution and oppression.

Mr. Jones, as assistant minister of Trinity Church, had an office, equivalent to one for life. Dr. Beach, when personally examined in presence of the arbitrators,* testified,

** This examination has been accidentally omitted; but except for this one point, is not material.*

that it was considered as a call for life. Mr. Van Wagenen,† Mr. Dominick,‡ and Dr. Moore,§ also prove, that to be the manner in which it has always been considered. This is established by the affair of Mr. Bissett, mentioned by Mr. Dominick, and is indeed acknowledged by the committee of the vestry of Trinity Church, in their second report;|| for when they say that the engagement may, *for sufficient cause*, at any time be dissolved by either party, they impliedly admit it cannot be dissolved without sufficient cause; therefore, is not held during pleasure, but during good behaviour; but most undoubtedly, an office that is held during good behaviour, and of which a party cannot be deprived without sufficient cause, is, in the eye of the law, an office during life. This is, in truth, the tenure of all pastoral connexions, where the contrary is not specified. It is the original, reasonable discipline of the church, as declared in the 29th general canon, that the station of a minister shall not depend on any thing else than his own soundness in the faith or worthy conduct. It is peculiarly the tenure by which Mr. Jones held his situation under his call, coupled and construed with the charter of the church, as being in *pari materia*. Mr. Jones's call,** is to accept the office of an assistant minister in the churches under the care of the vestry of Trinity Church, upon the same terms, on which the other assistant ministers are placed. To make this certain, it is only necessary to ascertain what are the terms upon which the other assistant ministers are placed. Dr. Hobart's call is given in the evidence,†† and he also is called on the same terms, on which the other assistant ministers are placed. Dr. Hobart was then called on the same terms as Dr. Beach, who was the senior assistant minister. It is said he was not assistant rector under the charter, until he was so nominated in March 1811; and this opinion, entertained by Mr. King, and perhaps, by others, was the cause of that nomination. Perhaps, it was a prudential act—but I see no reason for saying he was not previously the assistant

† See p. 120. ‡ See p. 123. § See p. 156. || See p. 5. ** See p. 24. †† See p. 192.

mentioned in the charter. The words of that instrument* are, "that the rector for the time, shall and may, by and with the consent of the said vestrymen and church wardens for the time being, or any eleven or more of them, whereof one of the church wardens to be one, from time to time nominate one able protestant minister in priest's orders, to reside in said parish, to be preacher and assistant to said rector and his successors, in the celebration of the divine offices of praying and preaching, and other duties incident to be performed in the said church and parish, as the said rector shall require of him." By an antecedent part of the charter, it is provided, that all the corporate acts shall be done by "the said vestrymen, or any eleven or more of them, whereof the rector for the time being, or his assistant, or clerk by appointment, and one of the church wardens to be two:" so that the expressions "vestrymen and church wardens for the time being, or any eleven or more of them, whereof one of the church wardens to be one," mean no more than that the appointment shall be at a regular meeting of the vestry. What then is necessary to make the senior assistant minister a charter officer? Nothing, but that he shall be a priest, nominated by the rector at a regular meeting of the vestry. Such a nomination by the rector, is always made in the case of an assistant minister: it was even done in the case of Mr. Jones, as appears by the evidence;† although the opposite counsel have mistakenly supposed the contrary—and, in truth, if the charter office had been vacant, every requisite was performed, in his case, to enable him to fill it—but, Dr. Beach was, I think, the assistant rector before the nomination in 1811; and such seems to have been the previously received opinion, as, before 1811, no one was ever appointed assistant rector in the same way, even during the absence of bishop Provoost, when he went to England to be consecrated. If then, Dr. Beach was the charter officer, by its express provisions, he was to hold for life, except displaced for some offence. Dr. Hobart was called in reference to Dr. Beach's tenure, and was there-

* See p. 22.

† See p. 193.

for life—and Mr. Jones's call has reference to both; so that, by the express contract of the vestry, construed as it necessarily must be by the charter, Mr. Jones was called for life: the vestry having uniformly conformed themselves to the correct discipline of the church, as declared in the 29th canon, until, for the purpose of keeping power in their hands, they more recently adopted a resolution in contradiction to that discipline, and in disregard to the canon.

Having ascertained the nature of his tenure, let us consider the value of his office. The nominal salary at the first appointment was 500*l.*—but by various resolutions, its emoluments were augmented to 1100*l.* a year; as Mr. Depeyster has stated,* these gratuities were intended to be annually continued, and so in fact have been, ever since, to the assistant ministers. He had then a call for life to a situation worth 1100*l.* a year, and when it is thought expedient to remove him, without any crime or immorality on his part, but only to gratify the feelings or meet the the views of individuals, he is awarded as a compensation for this life annuity of 1100*l.*—1000*l.*; less than the amount for one year, and the annual interest of which does not exceed 70*l.*! And this while on the right rev. prelate, who was his opponent, additional gratuities are accumulated, increasing his emoluments to 1500*l.* I do not mean to speak with any thing like disapprobation of this liberality, although the vestry in exercising it, were certainly actuated by very different sentiments from what influenced their conduct, when they withdrew from Dr. Harris five hundred dollars, after he was appointed president of Columbia College.

But it is said, Mr. Jones is removed with no stigma on his character, and he may obtain a settlement elsewhere. What the effect of that decision on Mr. Jones's character ought to be, the gentlemen have rightly stated; but what it has been, is very different from their present representations. The nature and the result of the proceedings against him, have been very much mistated, either ignorantly, or design-

* See p. 110.

edly, in the other parts of the union. Of this, permit me to specify an instance: in Maryland, a question has been agitated concerning the appointment of a suffragan bishop; and it has given rise to a number of pamphlets. In one of them, which alludes to the unhappy differences in our church in this diocese, the writer, I presume, having no friends or correspondents here, from whom he could have learned that this decision *was no stigma*, describes Mr. Jones as one whom the church had marked with the stamp of her deepest reprobation; and calls him an *ecclesiastical convict*! I trust this is no overflowing of domestic defamation, which has been conveyed to foreign parts, by secret channels, and devoted partizans. I hope the reverend author has not been led by any personal attachments or clerical party connexions deliberately to utter a wilful lie—that he is only a mistaken controversialist, and not a malevolent calumniator. But the expressions show the fallacy of the assertion, that Mr. Jones's character does not suffer abroad, from the decision of the presbyters, it is and must be misunderstood; his ministerial usefulness is and must be undermined, and the chance of another advantageous settlement rendered excessively precarious. The compensation of 1000*l.* then, is not only for his situation, worth 1100*l.* annually, during his life, but for the uneasiness he has endured, for the injuries inflicted on his character—for his wounded respectability as a minister of the gospel; and for the ruin of his future prospects.

The learned counsel have scarcely sought to conceal their desires; the respectable among Mr. Jones's opponents, all concur that the compensation should be much larger. Mr. King in his testimony has expressed his wishes that it should be liberal. I believe him; for I do not suppose he was actuated by any personal hostility to the plaintiff or his family; but a spell was cast upon his mind, "*Jones must quit the diocese!*" Yes, if he cannot rescue himself from the consequences of the proceedings had against him, he must not only quit the diocese, but all his ecclesiastical labours. You have been asked, can you restore him to his clerical functions? I answer no; and you should therefore take into consideration, that his adversaries may still find means of com-

selling him to remain as he is : in which case, he must remain without a living!—that he is now sunk down from a respectable opulence, earned by his services, to 70*l.* a year, with a wife and family;—and why? is it possible that so small and contemptible a sum could have been agreed upon, for any other reason, but as furnishing the means of forcing him by *négociation*, to leave the diocese, in order to acquire the means of subsisting. It is, when well considered, the conclusion of a clear, connected, systematic plan, disclosed in the frequently repeated words “ he must quit the diocese.” In addressing you, I name no sum; if (which I trust you never will) you should enter into the discussion of this part of the case, I put it to you, as I would to a most enlightened and well informed jury; I ask you to reward those services which were never questioned, that character, which even in the midst of bitter persecution never was impeached, and should you think that in the early part of these disputes, he may have done an imprudent act, has he not already suffered for it a tenfold measure of punishment?

I have now gone through my argument, I have exhausted myself; I fear I have exhausted the arbitrators. The great variety of matter incidentally brought under consideration, has presented some questions, with which I may be supposed to be more conversant, than even the arbitrators, from my early habits of living and education, as well as from my professional studies in a country, where the protestant episcopal church has a legal establishment, and where the principles and practice of its discipline are familiar. If that be the fact, they are the only points, as to which I should presume to enter into comparison. But if it be so, however much I might feel myself at liberty, on ordinary occasions of professional argument, to leave to superior learning and judgment the discovery and detection of its errors or weakness; yet trust me, on the doctrines of our church and the principles of its discipline, standing as I do, an episcopalian myself, I would not dare to mislead you; the earnest desire of success would not induce me to state any thing on those subjects, which I did not seriously and conscientiously believe to be the law of the church.

Of many of its ministers, I have been compelled to speak in terms of considerable severity. No man could lament the necessity more than I do—I have thus spoken with grief and pain: and nothing but an ardent love of justice, and an indignant sense of oppression could have extorted from me those remarks. I know that the character of a clergyman, as well as of a female, should be treated with delicacy and respect; and I am sensible, that he who ventures to take improper liberties with either, will receive well merited punishment from public reprobation;—but I must be permitted to add, that clergymen, as well as females, if they expect that delicate and respectful treatment, must themselves avoid shocking the decency and delicacy of their admirers. No man is more willing, at all times, and more uniformly accustomed to treat the ecclesiastical members of my own, and of every other communion, with marked respect; but I confess, I cannot, therefore, yield to the cry, which has been raised in this, as in many other cases, that an exposure of a minister's misconduct, is an injury to the religion he professes. I do not think so lightly of religion; nor do I believe it to rest on so poor a basis, as the personal respectability, or private character of any of its preachers. If they have acquired the purity of heart, and habits of virtue, which a frequent, due, and diligent meditation on the truths they teach, is calculated to create and to confirm, they deserve the love and veneration of the world; and perhaps, it may sometimes be politic, as well as charitable, to throw a veil over many of those occasional weaknesses, which show that the frailty of human nature cannot always be corrected, even by the precepts of the gospel. But this charity and policy has certain limits, and undoubtedly ought not to be extended to the more important occurrences of life, or the higher branches of morality. It is under this point of view I have regarded the transactions connected with this unhappy controversy; and I have not believed that it comported with the dignity, character, or welfare of our church, to wrap them up in silence, or treat them with disproportioned lenity. That church is said to have received in those disputes, many and deep wounds: I fear she has—but, though it may be natural, and not unamiable, I

cannot, therefore, deem wise or prudent, the affectionate weakness of those, who turn away their heads, and will neither examine, nor even look at those wounds; who will neither permit them to be probed, nor endeavour to ascertain by what they were caused, or how they were received—they must be approached with more scrutinizing eyes—with a more skilful and steady hand: to be cured, they must be laid open. The person who undertakes this office, is not, therefore, to be supposed destitute of feeling for the pain he must inflict; but if he is experienced in human folly, he will be prepared for senseless accusations of barbarity, and for the murmurs of the weak and ignorant. From those whom I now address, I expect no such reproaches: on the contrary, to them, as skilful and selected physicians, I commit the care of our suffering church. I have only touched her wounds, to shew to them, their nature, extent, and danger; but I now call upon them to examine for themselves—to probe, to lay open, and then to heal.

AWARD!

TO all persons to whom these Presents shall come or may concern—WHEREAS Cave Jones, of the city of New-York, clerk, hath commenced an action in the Supreme Court against the Rector and Inhabitants of the city of New-York in communion of the Protestant Episcopal Church in the state of New-York, to recover his salary and compensation as an Assistant Minister in the employ and service of the said Rector and Inhabitants—And whereas the said Rector and Inhabitants, and the said Cave Jones did agree to submit the said action, and all other matters which could properly be discussed in a court of justice in any suit or action between them the said parties, to the award, arbitrament and determination of James Kent, Smith Thompson, Ambrose Spencer, William W. Van Ness, and Joseph C. Yates, or any three of them, abitrators indifferently elected, chosen and named, as well by and on the part and behalf of the said Rector and Inhabitants, as of the said Cave Jones, as by the bonds of submission mutually executed and interchanged by the said parties, and bearing date the fourteenth day of July, in the year of our Lord one thousand eight hundred and twelve, reference being thereunto had will more fully and at large appear—And whereas the time mentioned in the said bonds for making the said award was afterwards, by the said parties, enlarged to the first day of November next.—Now therefore, know ye, that we the above named arbitrators having taken upon ourselves the burthen of the said arbitrament, and having heard the allegations and

proofs of the said parties, do, by these presents, award and adjudge as follows, to wit :

1st. We award and adjudge, that the said action of the said Cave Jones against the said Rector and Inhabitants cease, and be no further prosecuted.

2d. We award and adjudge, that the said Rector and Inhabitants pay to the said Cave Jones, on or before the first day of November next, the sum of Seven Thousand Five Hundred Dollars, together with the actual balance due the said Cave Jones, on the 5th day of November 1811, for services previously rendered by him, to the said Rector and Inhabitants.

3d. We award and adjudge, that the said Cave Jones, at the same time execute, under his hand and seal, and deliver to the said Rector and Inhabitants, a release of all actions, claims and demands whatsoever in law or equity arising or to arise upon any contract, matter or thing mentioned or referred to in the recitals contained in the said bonds of submission.

In witness whereof the said arbitrators have herunto set their hands and seals, this twenty-fifth day of October, one thousand eight hundred and thirteen.

JAMES KENT,
SMITH THOMPSON,
AMBROSE SPENCER,
W. W. VAN NESS,
JOSEPH C. YATES

APPENDIX.

The following depositions of Dr. Beach, and Mr. Lawrence were offered as evidence in this cause by the plaintiff's counsel, on the third day after the argument was begun at Albany, and objected to by the defendant's counsel, on two grounds.

1. Because the parties had entered into a written agreement that all the evidence on both sides should be taken on or before the 15th instant; and that the interrogatories on which Dr. Beach and Mr. Lawrence had been examined were not completed and sent from New-York till the 15th; that they were examined on the , and that their depositions were therefore not taken in time.

2. Because it was in the power of the defendants to have contradicted, by other witnesses, the most material parts stated in those depositions, if they had been taken in time to have known their contents; and which they had lost the opportunity of doing, by the omission of the plaintiff to examine the witnesses within the time agreed upon, or even taking any measures for their examination, until the last day on which testimony could be taken.

Interrogatories to be exhibited to the rev. Abraham Beach, D. D. of New-Brunswick in the state of New-Jersey, on the part of the rev. Cave Jones in a certain arbitration depending between him and the rector and inhabitants of the city of New-York in the communion of the Protestant Episcopal Church in the state of New-York.

1. Were not you an assistant minister of Trinity Church in New-York for several years previous to the settlement of Mr. Jones, and some time since the proceedings in his case? Pray mention the time of settlement, and of resignation.

To the first interrogatory saith, that he entered on the duties of assistant minister of Trinity Church, New-York, on the 7th July, 1784, and resigned on the 4th March, 1813.

2. During that time, what was the usage of the church in New-York as to the settlement of the clergy; and what do you understand to have been always the established usage, in relation to the tenure of the office of the assistant ministers?

To the second interrogatory saith, that there was nothing expressed in his call respecting its duration, but supposed it was to continue during good behaviour; and he never knew any usage to the contrary.

3. Did the case of Mr. Bisset afford any, and what illustration on the subject of the foregoing enquiry?

To the third interrogatory saith, that it is not in his power to give any account of Mr. Bisset's call or resignation.

4. How long did you act in the capacity of assistant rector? Did you ever know or hear of an officer in that capacity, before your own case? Did not Dr. Provoost, while he was rector of Trinity Church, go to Europe for consecration? Was any assistant rector appointed in his absence?

To the fourth interrogatory saith, that he continued to act in the capacity of assistant rector in Trinity Church about two years; that he knew of no officer in that capacity before his own appointment; that doctor Provoost did go to Europe for consecration while he was rector of Trinity Church, and that he never heard any assistant rector was appointed in his absence.

5. What was the amount of salary and of compensation of the assistant ministers of late years? Has not the compensation or complement, voted by the vestry, been made a part of the salary, though of different amounts, ever since the settlement of Mr. Jones in Trinity Church? Was not this complement always voted to all the assistant ministers at the same time, and to the same amount? And was it not counted on with equal certainty, as the nominal salary of 500l.? What was the salary and compensation of Dr. Hobart and Mr. How for the last two years?

To the fifth interrogatory saith, that the stated salary of an assistant minister from the time of his acting as such, till some time about the year eighteen hundred and four, was five hundred pounds per annum: two hundred pounds per annum was then added to the salary; this addition to continue for seven years, and no longer: besides the stated salaries, the vestry, for about sixteen or eighteen years last past, voted a gratuity to each of the assistant ministers, of at first one hundred pounds per annum, afterwards two hundred pounds; and for several years past, of four hundred pounds per annum. These gratuities were voted to the assistant

ministers at the same time. It was, however, expected, that the gratuity would be annually repeated, though it was optional with the vestry to withhold it if they thought proper. The salary and compensation of Dr. Hobart and Mr. How, for the last two years, was eleven hundred pounds per annum each.

6. Were not you president of the house of clerical and lay deputies in the general convention of 1801, when bishop Moore was consecrated? Under what impression did you understand that body to have signed the testimonials of Dr. Moore, and to have attended his consecration? In what capacity did you understand bishop Moore to act, previous to the state convention of October 1812?

To the sixth interrogatory saith, that he was president of the general convention in the year 1801, when bishop Moore was consecrated; that with respect to the impression under which that body signed his testimonial, he can only say, that they did it in consequence of the resolution passed on that subject by the house of bishops; that from the consecration of bishop Moore until his illness, he performed all the functions of bishop in the state of New-York.

7. Were not you president of the vestry of Trinity Church, during the whole of the time that the business was agitated concerning Mr. Jones?

To the seventh interrogatory saith, that he was president of the vestry of Trinity Church during the time the business was agitated concerning Mr. Jones.

8. At the time that the first resolution was passed by that body on the 13th of May 1811, expressive of their disapprobation of Mr. Jones's publishing; did you understand that any controversy or divisions then existed, or had previously existed between Mr. Jones and that body?

To the eighth interrogatory saith, that when the resolution of the 13th May, 1811, was passed, he knew of no controversy, but perceived the members of the vestry to be violently incensed against Mr. Jones for publishing his "Solemn Appeal."

9. From the time of passing the above mentioned resolution in May, till the 5th of September 1811, at which time the resolution was adopted of proceeding against Mr. Jones, was any committee appointed to wait on him; was any official information imparted to him by the vestry of the existence of differences; or was any official communication in any way whatever made between them and him on the subject?

To the ninth interrogatory saith, that he does not remember that any communication took place between the vestry and Mr. Jones, other than that the clerk was directed to furnish him with a copy of the resolution.

10. If differences and controversies did exist between them; were any means taken by the vestry to heal those differences?

To the tenth interrogatory saith, that he did not know of any differences existing between them.

11. Did not Mr. Jones write a letter to the vestry, dated September 4, 1811; was not the same delivered to the vestry at the time when they adopted the report of their committee to proceed against Mr. Jones; and what were the proceedings of the vestry thereupon?

To the eleventh interrogatory saith, that the vestry did receive a letter from Mr. Jones in or about September, 1811, when they adopted the report of the committee to proceed against him; but as to the proceedings of the vestry thereupon, the deponent cannot take it upon himself now to state them from memory, but must refer to the minutes of that body.

12. Was there not a committee of the vestry which made a report in reference to the case of Mr. Jones on the 5th September, 1811?

13. At the time of the appointment of that committee, had it any instructions on the business of Mr. Jones? Explain, if you please, the nature of that committee?

To the twelfth and thirteenth interrogatories saith, that there had been some time before a committee appointed on the state of the church; whether it was that committee which reported on the 5th September, 1811, or one particularly appointed on the business of Mr. Jones, he cannot positively declare; but that he is rather of the opinion it was a particular committee; that he cannot state particularly the instructions given to the committee, but thinks they were to investigate and report what, in their opinion, was best to be done in Mr. Jones's case.

14. At the time of the adoption of the resolution in May 1811, commencing this business, what did you understand as to the expectation or intention of the members of the vestry generally, respecting the taking of any further measures?

To the fourteenth interrogatory saith, that it is impossible for him to speak positively on the subject of this interrogatory, but that he thinks it was expected by many, that a compromise would take place.

15. After the vestry had made an application to bishop Moore for the removal of Mr. Jones, and before the meeting of presbyters on the 5th of November 1811; were not you invited by bishop Moore to attend a private meeting of some of the presbyters? Did you attend such meeting; and what was its purpose? Relate, if you please, the time and place of that meeting; also the time of the day; what presbyters were present; and the several circumstances attending:—particularly the sentiments which you delivered on that occasion.

16. Was not that a special meeting called for that occasion? At what period of the proceedings of the said meeting were you sent for?

17. Was not bishop Moore at that period rector of Trinity Church?

To the fifteenth, sixteenth, and seventeenth interrogatories he saith, that he is not certain as to the day, but it was not long before the meeting of the presbyters on the 5th November, 1811, that the Rev. Mr. Prentice came to him in haste from bishop Moore to request his immediate attendance at Mr. Moore's in Robinson-street; that he instantly obeyed the summons, it was about one or two o'clock P. M. there were present Rev. Mr. How, Mr. Bowen, Mr. Lyell, and several other clergymen. The bishop then stated to the deponent, that he had called a meeting of the presbyters in consequence of the disturbances which had lately arisen in the church, and should have given the deponent earlier notice, had he known he was in town; that they had already determined the business for which the meeting was called, by advising Mr. Jones to resign, and that the vestry of Trinity Church should give him one thousand pounds; and applied to the deponent for his opinion on the subject. That the deponent's answer was to this effect; in the present situation of the church, that he thought Mr. Jones's resignation, might be the means of restoring peace to it, and to himself, and that therefore, he thought it a prudent measure; but that he could wish his resignation might take place without wounding his feelings, or injuring his reputation; and therefore proposed to the bishop, to send for Mr. Jones, not in his official character, but as an affectionate friend, and advise him to resign, without holding up the idea of coercion, or saying any thing relative to the canons, giving him assurances, which he had reason to think might be done with safety, that the vestry would prevent his resignation being of any pecuniary disadvantage to him; and thus, by his friendly interposition, to effect a resignation to the satisfaction of all parties. The bi-

shop said he would do so—but the deponent has never heard that the measure was adopted. Bishop Moore was then rector of Trinity Church.

18. Was Mr. How, one of the attending presbyters, a party concerned in the controversy? If he was a party, in what degree, and how did he become so?

19. Were not several of the other presbyters present, committed on the subject, by giving certificates or otherwise? Will you please to mention those whom you have reason to consider so committed?

To the eighteenth and nineteenth interrogatories saith, that he cannot state who were the parties to the controversy; that several of the presbyters, he thinks, gave certificates on the subject.

20. Were any, and which, of the attending presbyters, dependents on Trinity Church? Will you mention those whom you know to be so dependent; the extent of the aid they derived from Trinity Church; and the means of your knowledge thereof?

To the twentieth interrogatory, saith, that he doth not perceive clearly, what is here intended or meant by dependents on Trinity Church; all he can say is, that the most of the clergy in the diocese, have occasionally received donations from the corporation of Trinity Church.

21. Was any, and what annuity, afterwards voted to the rev. Jonathan Judd? If yea; when, and on what grounds?

To the twenty-first interrogatory, saith, that some time after the meeting of the presbyters, stated in the 15th interrogatory, there was granted to the rev. Mr. Judd, a gratuity of one hundred pounds, on the same grounds, he presumes, as gratuities had been granted to other clergymen.

22. Was not the rev. Mr. Haskill an applicant to the vestry of Trinity Church for assistance, at the same time with Mr. Judd? Was any grant made to him?

To the twenty-second interrogatory, saith, that Mr. Haskill was an applicant to Trinity Church for assistance, about the same time with Mr. Judd, but did not then succeed; it being suggested that his parishioners were rich, and consequently that he was not so much in need of assistance, as some others. That the vestry afterwards voted a sum, not exceeding five hundred dollars, to be applied in repairing Mr. Haskill's glebe, on condition that his congregation would vote an equal sum for the same object.

23. Did not Dr. Harris protest against the proceedings at the above mentioned meeting of presbyters? And did not the

vestry of Trinity Church, a short time after, discontinue an annuity which had been previously granted?

To the twenty-third interrogatory, saith, that he does not recollect that Dr. Harris was present at the meeting alluded to; nor does he know that Dr. Harris ever protested against that meeting, though he did against the meeting of the 5th of November following. To the other part of the interrogatory, he answers in the affirmative.

24. In making appropriations in aid of the support of the clergy of other congregations, what is the general mode pursued by the vestry of Trinity Church?

To the twenty-fourth interrogatory, saith, that he knows of no other mode, than granting gratuities when necessary.

25. Whom have you always considered as the true parties to the controversy which for some time has existed in the church?

To the twenty-fifth interrogatory, saith, as before, that he cannot state the parties to the controversy, but presumes all who were concerned in it, on either side, are to be considered in that light.

26. On what ground was it that Mr. Jones declared to you his determination to publish his "Solemn Appeal?"

To the twenty-sixth interrogatory, saith, that when he mentioned to Mr. Jones the impropriety of publishing his "Appeal," and endeavoured to dissuade him from it, he declared that his motive in doing it was, to state to the members of the church, some circumstances respecting Dr. Hobart, with which he deemed it necessary they should be acquainted, and which rendered him, in his opinion, an improper person to fill the office of bishop, for which office he was a candidate. As a farther reason for making the publication at that particular time, he observed, that if Dr. Hobart should succeed in his election, he, Mr. Jones, would be forever barred from terminating on equal terms the controversy which had for years subsisted between them.

27. Is not the account contained in the "Solemn Appeal," from page 79 to page 83 inclusive, relating to the treatment received by you from Dr. Hobart and Mr. How, in substance and circumstances correct?

To the twenty-seventh interrogatory, saith, that as to that part of the account which relates to Dr. Hobart, he is under the painful necessity of answering in the affirmative—that the part which relates to Mr. How, is not so correct.

28. Will you please to furnish your own relation of the conduct of Dr. Hobart and Mr. How, with relation to the subject now under consideration: particularly, what passed

at one interview at the College with Dr. Hobart; at one other, when he applied for a certificate concerning Mr. Jones; and at three others, when he urged an exculpation on these points? All the attending circumstances are desired, as far as can be recollected.

29. Did not you, on the evening previous to the election of Dr. Hobart in May 1811, propose to the clergy on both sides of the controversy, that a meeting should take place at your house, in order to reconcile differences, before they should enter upon that solemn duty? Did not Mr. Jones and his friends attend? Did Mr. How, or Dr. Hobart, or any one authorized to act in their name?

To the twenty-eighth and twenty-ninth interrogatories, saith, that he cannot properly answer these interrogatories, without mentioning many circumstances, which he could wish forever to blot from his memory, but that on this solemn occasion it is his duty to be explicit, however distressing to his feelings. On his (the deponents return from the country in March 1811,) whither he had been for a few days, the deponent found that a special convention had been called in his absence, for the express purpose of electing an assistant bishop, a circumstance which could not fail of being interesting to every member of the church, and especially to those who minister at the altar. The deponent therefore wished to embrace the opportunity, which was presented by Doctor Hobart's calling upon him in the morning after the deponent's return, to converse with the Doctor on the subject; that, by knowing what his wishes were, the deponent might be better enabled to render Dr. Hobart every friendly office in the deponent's power. The deponent had no sooner mentioned the subject to Dr. Hobart, than to the deponent's utter astonishment, his feelings were wounded by these expressions, uttered not "in a manner not more respectful and tender, than justice and truth and honour demanded," but with great asperity and every appearance of irritation; "*I will not talk with you on this subject,—I will say nothing to you about it.*" Grieved to the heart to receive such language, accompanied too, by a manner so different from any thing the deponent had been accustomed to think decent and becoming, as soon as he could recollect himself, after so unexpected and heart-rending a repulse, he attempted by the most soothing expressions, to know the cause of his irritation, but the attempt was fruitless, and at parting, such was the state of the deponent's feelings towards Dr. Hobart, that he could not refrain from expressing what his heart dictated, notwithstanding the marked indignity with which Dr. Hobart had spurned the deponent from him; and this expression was, that God would bless him!

As this circumstance is mentioned in Dr. Hobart's pamphlet, it is here alluded to, in order to explain the frame of mind in which the expression was uttered. Soon after this conference, Dr. Hobart again called on the deponent, and in a commanding tone, demanded a certificate in writing, that his conduct towards Mr. Jones had always been friendly and conciliating, as far as it had come to the knowledge of the deponent. In reply, the deponent informed him, that he could certainly testify *as to that point*, but that in justice to Mr. Jones, he should be obliged to testify, that Mr. Jones's conduct had always been equally friendly to Dr. Hobart. The deponent remarked likewise, that he deemed it improper to give any certificate at present, to either of the gentlemen, as he had on the same day, by the earnest desire of a respectable member of the church, who was friendly to both, been endeavouring to effect a reconciliation between them. These reasons, however, availed nothing; and he persisted in his demand of a certificate from the deponent, as an act of justice which he could not refuse. As the deponent did not recollect a single instance during the whole term of their acquaintance, in which he had declined a compliance with any request of Dr. Hobart, he found it difficult to give him a peremptory refusal, notwithstanding the harsh and unfriendly treatment he had just received, and therefore mildly proposed to take a little time for the consideration of a matter, which appeared to him of considerable importance. In this manner they parted the second time.

In the afternoon of the same day, the deponent happened to be at Dr. Bowden's rooms in the College, when Dr. Hobart came in, and was scarcely seated, before he importuned the deponent for the certificate, which he had requested. The deponent replied, in as cool and conciliating a manner, as he was capable, that the more he reflected upon the subject, the more he was convinced of the impropriety of giving any certificate at this time, either to Dr. Hobart, or to Mr. Jones; as it would undoubtedly subject the deponent to the imputation of being a partizan, rather than a conciliatory friend to both. Instead of being satisfied with the reasons for declining his request, Dr. Hobart discovered considerable irritation, though in the presence of Dr. Bowden and family. On his retiring, as he soon did, the deponent followed him to the front door, in order to sooth him if possible, and reconcile him to the line of conduct which the deponent wished to pursue. He no sooner perceived the deponent at the door, than in increased agitation, he accosted the deponent in these words, "If you will not do me justice, I will do myself justice—and I will publish to the world, what you have said of

Mr. Jones, and that you will say one thing to day and another to-morrow, and I will prove it sir, I will prove it." The only answer which the deponent made to him was, "you are at liberty to do as you please, sir, but be assured, I shall never answer any of your publications." He left the deponent with great precipitation, and with deep impressions of regret on the deponent's mind. Several days then passed, perhaps a week or fortnight, before the deponent heard any thing further of Dr. Hobart. At length the deponent received a message from Dr. Hobart, requesting an interview, in order to an accommodation. With this proposal the deponent felt much gratified, and with pleasing expectation looked forward to a renewal of the friendship between him and Dr. Hobart. A time was appointed for a meeting, and it took place soon after, in the presence of two of their friends. It is difficult to describe the astonishment which the deponent felt, when instead of an apology for his conduct, as it was natural to expect, Dr. Hobart laboured incessantly through the whole evening, to draw from the deponent, something that might have the appearance of a declaration that the deponent misunderstood Dr. Hobart, and that it was not his intention to insult the deponent. The deponent's answer was decidedly and uniformly to this effect:—"Dr. Hobart, your language was so plain, your manner so impressive, and so abrupt was your angry departure from me, that it was not possible that I should have misunderstood you; and with respect to your *motive*, of that you only can be the proper judge. However distressing to the bosom of friendship your conduct has been to me, I sincerely wish for my own peace, and for the peace of the church which we serve, it may from this moment be buried in eternal oblivion; nor will I even ask from you an apology." Dr. Hobart still persisted in his endeavours to extort from the deponent some expression or other, that might appear to soften his (Dr. Hobart's) conduct, but still without success. Unwilling, however, to relinquish all hope of reconciliation, the two friends who attended on the occasion, proposed to adjourn for the present, and to meet again with another friend in whom they both had confidence. This was agreed to. The second meeting took place, and the third friend attended. The deponent repeated his proposals for a reconciliation. Dr. Hobart insisted with the same determined resolution as at the last meeting, that the deponent should some way or other give a more favourable colouring to the transaction. Not succeeding in his attempt, he refused to comply with the deponent's proposals, and precipitately left the room. In a day or two afterwards, he informed the deponent by a friend of the deponent's, that

he was now ready to comply with the deponents proposal, and if agreeable, would call upon the deponent for that purpose. Dr. Hobart's request was readily granted—he came, and it was agreed to say no more upon the subject.

Soon after this transaction, the day arrived on which the election of an assistant bishop was to take place. Though the deponent had once thought, and as he believes, had mentioned to some of his friends, that Dr. Hobart would be a proper person to fill that office, yet his late behaviour had convinced the deponent that he had judged too hastily. The deponent could indeed, and did readily agree, to pass over Dr. Hobart's late conduct towards him, even without an apology, so far as it respected a friendly intercourse with him in future. Yet the deponent found it impossible to give his sanction to an election of one, who appeared to discover such a want of christian meekness and humility as pertinaciously to persist in justifying, what was deemed by the deponent the most unjustifiable conduct, and in disclaiming the idea of his being like other mortals, liable to error. Such a temper was deemed by the deponent unsuitable to the character of a christian bishop; and therefore when no one but Dr. Hobart could be found, who would permit himself to be held up as a candidate for that office, the deponent wished this difficulty might be removed, and for some time cherished the hope, that on cool reflection Dr. Hobart would see the impropriety of his conduct, and have the magnanimity to confess it, which was all that the deponent required. The day preceding the election however arrived, and the deponent's hopes were not realised. Unwilling *even then* to relinquish an object which he deemed of so much importance as unanimity in the choice of a bishop, the deponent ventured to mention to Dr. Hobart his feelings and wishes upon that subject; whereupon Dr. Hobart frankly expressed his regret for what had passed, and gave to the deponent such satisfaction as a christian ought to accept, on which, the deponent determined to give him his vote. One obstacle still remained. Several of the clergy were so averse to the election of Dr. Hobart, as to excite unpleasant apprehensions respecting the peace of the church if he should be elected. In this critical situation, and to secure, if possible, harmony among the clergy, a conference was had of as many of them as could be convened, to devise some method to avert the impending evil. At this meeting Dr. Hobart and Mr. How did not attend. It was unanimously resolved by those present to bury in oblivion all disputes, animosities, and contentions which subsisted between any individuals, and to unite one and all in the present candidate. Thus, a fair prospect was opened for the restoration of harmo-

ny; no doubt remaining but that Dr. Hobart and those who were solicitous for his election, would cheerfully acquiesce in the plan proposed. These fair prospects, however, were unfortunately blasted by a refusal on the part of Dr. Hobart and his particular friends, to accede to the plan, unless Mr. How was excepted from the general amnesty. After the election had taken place, though not with the unanimity contemplated, the deponent endeavoured, by paying to the newly elected bishop the respect due to his office, and by every friendly attention in the deponent's power, to preserve the peace of the church. For a few weeks every thing seemed to wear a favourable aspect. But about this time a circumstance occurred which disappointed the pleasing expectation, which the deponent had formed of future harmony between him and Dr. Hobart. The Board of Trustees of Columbia College, of which the deponent and Dr. Hobart were both members, were about electing a president for that institution, and Dr. Hobart mentioned to the deponent his wish that Mr. How might have the appointment. It was the deponent's misfortune to disagree with Dr. Hobart in opinion; and as he supposed that Dr. Harris would be a more proper person to fill the office, he frankly told Dr. Hobart so. Only in *one instance* before had he received from the deponent any opposition to his wishes. On finding the deponent to hesitate on the present occasion, he appeared a little irritated, and in a tone rather commanding, said, Mr. How will be nominated and will have a number of votes; and that he (Dr. Hobart) would move at the board that the election should be *viva voce*, intimating, as the deponent supposes, that the deponent would not dare to oppose him. The deponent's answer was to this effect—Mr. Harris will likewise be nominated, and will have a number of votes, I perfectly agree with you, that instead of balloting, the mode you mention will be the most eligible. The election terminated unanimously in favour of Mr. Harris. Dr. Hobart since has published his pamphlet, which he calls his vindication; and in which he endeavours to asperse the character of the deponent. From the time of that publication, no friendly intercourse has subsisted between Dr. Hobart and the deponent.

30. In the pamphlet entitled, "A Letter to the Vestry of Trinity Church," published by Dr. Hobart as an answer to the "Solemn Appeal", are contained extracts of a letter from you, in answer to certain questions proposed.—Is the whole of that letter published? If not, produce if you please, the part suppressed.

To the thirtieth interrogatory, saith, that upon a comparison of copies of his two letters of the 8th and 13th of July, 1811, with the extracts of them published in Dr. Hobart's pamphlet, it appears that the doctor has omitted to publish the following paragraph contained in the first letter, viz.

"Third question. In a conversation with you a short time previously to the late special convention, did you not state to me, that you had an interview with Mr. Jones, and that he had expressed to you a disposition to a reconciliation with me, but that there were certain conditions; one that he should be replaced in the standing committee, and the other that I should not consent to be bishop?"

"Answer. In the conversation had with Mr. Jones, at the request of a most respectable member of our church, with a view to a reconcilment of the differences which unhappily subsisted between you and him, the conditions to which you allude, were mentioned by him; but I afterwards understood, that previously to the publication of his pamphlet, he proposed to refer all matters of disagreement subsisting between you, to the decision of three lay gentlemen, without insisting upon any conditions, and to abide by their decision, whatever it might be."

It appears also, that he has omitted to publish the following paragraph, contained in the second letter of the 13th of July, viz.

"I am grieved to the heart to be under the necessity of saying any thing on a subject so distressing to my feelings as the one before us, and were it in my power, every thing that relates to it, instead of being published to the world, should be buried in eternal oblivion."

31. Did not the rev. Elias Cooper, one of the attending presbyters on the 5th of Nov. 1811, express in your presence since that period, regret at the part which he then acted?—State, if you please, what he said, and the reasons assigned.

32. Is it not a fact, that some respectable communicants of the church, refused to receive the communion from the hands of Dr. Hobart and Mr. How, and to meet with them at the altar?—If yea, state the grounds of such refusal.

33. What is the fact with regard to the relative attendance of the communicants at the altar, since the discontinuance of the ministry of Mr. Jones, and prior to your removal; that is, were they more or fewer in number than before that period?

34. When you officiated at either of the churches respectively, in conjunction with Dr. Hobart, Mr. How, or Mr. Jones, what was your observation with regard to the relative attendance? that is, did individuals withdraw themselves only

when Mr. Jones officiated; or was the same practised on the days of the officiating of the two former clergymen; and what, as it appeared to you, were the relative numbers?

To the thirty-first, thirty-second, thirty-third and thirty-fourth interrogatories, saith, in answer to those four interrogatories, that the rev. Elias Cooper, since November 1811, has had some conversation with the deponent on the subject alluded to, and may have expressed some regret, but the deponent cannot now recollect what passed, so as to state it with any degree of accuracy. That he has reason to believe that some of the parishioners stayed away, or declined the communion when to be administered by Dr. Hobart and Mr. How, and that others did the same under Mr. Jones's administration of it; but that he cannot at this day, determine or state their relative numbers; that he is of opinion there are not so many communicants since the dispute began as there were before.

35. Do you know of any other matter or thing useful for the said Cave Jones, in relation to the matters before named, besides what you have been particularly interrogated unto? If yea, set forth the same as fully and at large, as if you were thereunto particularly interrogated, with the grounds and reasons of your knowledge and belief respecting such matters.

To the thirty-fifth, he saith, that he doth not recollect or know of any thing further, material, to be set down in answer to the aforesaid interrogatories.

N. B. The said Abraham Beach offering himself for further examination on the subject of his answer above stated to the thirtieth interrogatory, saith, that when he was under examination upon that interrogatory, he could not find in Dr. Hobart's pamphlet the *third question* and the *answer to it*; and that he could not then recollect whether he had ever seen it there; but that having made more diligent search since, he finds the third question and answer are contained in the pamphlet, and therefore desires to correct so much of his answer to the thirtieth interrogatory,

ABRAHAM BEACH.

Taken and sworn to this 23d July, 1813, before me,
ROBERT BOGGS.

The answer of the said Abraham Beach, D. D. to the cross-interrogatories put in the aforesaid case.

1. Who has exercised the powers of diocesan bishop in the state of New-York since the year 1801.

To the first interrogatory, the said Abraham Beach answereth and saith, that Dr. Moore has exercised the powers

of diocesan bishop in the state of New-York since the year 1801.

2. When the publication of Mr. Jones came under the consideration of the vestry, did you not consider it as an offence against the church, and as giving to it just cause of dissatisfaction.

To the second interrogatory he saith, that he did consider the publication of Mr. Jones as an imprudent thing, and as giving cause of dissatisfaction.

3. Be pleased to mention all the objects of the appointment of the committee referred to in the sixteenth direct interrogatory, as expressed in the resolution under which that committee was appointed.

To the third saith, that as there is no committee mentioned in the 16th direct interrogatory, he can give no answer to this 3d interrogatory.

4. State the names of all the persons present at the first meeting of presbyters referred to in the seventeenth interrogatory, and declare also whether you did not express yourself to be satisfied with their proceedings and with the determination which they then came to.

To the fourth, saith, that he refers to his answer already given to the 15th and 16th interrogatories.

5. In your answer to the twenty-first, twenty-second and twenty-third direct interrogatories or either of them, do you mean to be understood as asserting or insinuating that an annuity or other allowance was granted to Mr. Judd on account of the part he took in the controversy between the vestry and Mr. Jones.

To the fifth, saith, that in his answers to the 21st, 22d and 23d, direct interrogatories, does not mean to assert or insinuate, that the annuity or allowances there spoken of, was either given or withheld on account of the part taken in the controversy.

6. Do you recollect whether specific grounds were not assigned in the vestry for withholding further aid from Mr. Haskill and Mr. Harris? State these grounds and declare whether the vestry did not act on them.

To the sixth, saith, that he hath already answered this interrogatory, in regard to Mr. Haskill, in his answer to the 23d direct interrogatory: with regard to Mr. Harris, it was stated in the vestry, as a reason for withholding further aid to him, that he was then in the receipt of the same sum as president of Columbia College.

7. Do you know of any instance whatever in which the part taken by any of the clergy in the affair of Mr. Jones

has been urged, or has operated for or against the granting of assistance to them?

To the seventh, saith, that he doth not know of any such circumstance as is alluded to in this interrogatory.

8. Was not Dr. Hobart, previously to the spring of 1811, on terms of the most intimate and most friendly intercourse with you?

To the eighth, saith, that his answer is in the affirmative.

9. Previously to the fall of the year 1808, when Dr. Hobart discovered Mr. Jones's hostile designs against him, did you ever hear Dr. Hobart express himself in unfriendly terms of Mr. Jones? But on the contrary, have you not heard Dr. Hobart defend Mr. Jones from unfavourable remarks?

To the ninth, saith, that previous to the year 1808, he does not remember, that he ever heard Dr. Hobart express himself in unfriendly terms of Mr. Jones; and that he has heard Dr. Hobart defend Mr. Jones from unfavourable remarks.

10. Had you not very little intercourse with Mr. Jones, except so far as official duty was concerned prior to the spring of 1811?

To the tenth, saith, that he had no particular intimacy with Mr. Jones prior to the year 1811, but there had been considerable intercourse and exchange of civilities, and they had lodged at each others houses; the intimacy before and since, has been pretty much the same.

11. Did you not conceive that in some case Mr. Jones did not act in as friendly a manner as you wished towards you; and in all these cases, as far as you recollect, did not Dr. Hobart, when they were mentioned to him, palliate the conduct of Mr. Jones?

To the eleventh, saith, that if any such cause ever occurred, of an unfriendly manner towards him on the part of Mr. Jones, they must have been of a trivial nature; and that he hath no traces of them now, which enables him to state any thing with precision.

12. At the convention in the fall of the year 1808, did not Dr. Hobart state to you his regret at the discovery of Mr. Jones's hostile sentiments towards him and express to you his intention, with a view of soothing Mr. Jones and preserving peace, of declining a re-election to the offices which he (Dr. Hobart) then held in the church? And did you not dissuade him from declining?

To the twelfth, saith, that he refers for an answer to this interrogatory, to his answer to the 1st question in his letter to Dr. Hobart, of 8th July 1811, as published in Dr. Hobart's pamphlet.

13. In the publication of the rev. Mr. Jones, entitled a Solemn Appeal to the Church, page 30, it is stated, that at a meeting of the standing committee, in March 1810, "Dr. Beach took an early opportunity, which appeared to be by design and pre-arrangement, to introduce a conversation concerning the rev. Dr. R. C. Moore. The irregularity of his proceeding in the holding of his private societies was descanted on, and an intimation was thrown out by Dr. Beach, whether it was not proper that he should be left to himself, and that we should have nothing to do with him. 'To this, Dr. Hobart made answer, that in that respect it appeared to him, every one ought to be left to his own discretion." Referring to this statement you will be pleased to mention what recollection you have of the facts there alleged?

14. Have you not uniformly disapproved of those private societies which Dr. Moore was in the habit of holding?

To the thirteenth and fourteenth, saith, that at the meeting of the standing committee alluded to in the 13th interrogatory, he recollects that such a conversation as therein is stated was held, but that it did not arise from design or any pre-arrangement; that he has generally disapproved of the private societies R. C. Moore was in the habit of holding.

15. After the illness of bishop Moore, was you not assured by Dr. Hobart, and by others from him, that he considered the rectory of Trinity Church as your diocesan; that no others had any pretensions to it? Did you not at one period after the event above alluded to, disclaim all idea of the episcopate; and did not a change in your sentiments on this subject take place after you left the city on a visit to your farm in the country? In particular, did you not on the day after your return to the city, state to Mr. Lyell and Dr. How, that if elected to the episcopate, you would serve in that office?

To the fifteenth, he saith, that an observation did come from Dr. Hobart, respecting the rectorship, as stated in the first part of this interrogatory. That he had generally disclaimed the episcopate, but afterwards, on his return from the country, he was prevailed upon, under an idea that it might heal the disturbances in the church, to say, that if elected, he would serve; that he continued in this mind but for a day or two, when on further reflection, he adhered to his former determination, and declined the appointment, which was immediately made known.

16. Did you not see Mr. Jones on the Monday following your return to the city, and Dr. Moore and Mr. Harris on the ensuing Thursday; and did you not directly or indirectly

give them to understand, that if elected to the episcopate, you would accept the office; and was not this the first conversation directly or indirectly which you had with them on the subject?

To the sixteenth, saith, that he recollects mentioning to the gentlemen named in this interrogatory, that he would accept the episcopate if elected, but that he very soon after, as before stated, declined it. That he cannot be precise as to the days, nor whether that was the first conversation on the subject.

17. Did you not state to two members of the vestry, Mr. Harison and Mr. King, or one of them, that you had entertained no thoughts of serving in the office of bishop, until this measure was represented to you by Mr. Jones, Mr. Moore, Mr. Harris, or some or one of them, as essential to the peace of the church?

To the seventeenth, saith, that he did mention to Mr. King and others, that he had not thought of serving in the office of bishop, until he was persuaded to it, as a measure essential to the peace of the church, as is stated in answer to the fifteenth cross-interrogatory.

18. Did you not state to the rev. Mr. Barry in the vestry room of St. John's, or in your going to, or returning from that church, that the calling of the special convention for the purpose of electing a bishop was the result of intrigue; and that Mr. Harison had induced the bishop to call that convention?

To the eighteenth, saith, that he has no recollection of the conversation with the rev. Mr. Barry, alluded to in this interrogatory.

19. Did you not state to Dr. Hobart, that in an interview you had on the Monday morning after your return from the country with the rev. Mr. Jones, that he (Mr. Jones,) had mentioned, as conditions of reconciliation, that he should be restored to the standing committee, and that Dr. Hobart should resign his pretensions to the episcopate, or words to that effect? And did you not, at the same time, promise Dr. Hobart that you would furnish him with a statement of your knowledge of his conduct relative to the rev. Mr. Jones?

To the nineteenth, saith, that he can give no other answer to the first part of this interrogatory, than is contained in his answer to Dr. Hobart's *third* question, as stated in his answer to the 30th direct interrogatory; and that he did not then promise Dr. Hobart to furnish him with any statement respecting his conduct in relation to Mr. Jones.

20. Did not Dr. Hobart state as a reason for declining conversation with you on the subjects of the rectory and episcopate, a desire to prevent the imputation that you and Dr. Hobart were dividing the offices of the church between you?

To the twentieth, saith, that in some one of their last conversations, Dr. Hobart did state to deponent, as a reason against his talking with him about the rectorship and episcopate, that it might be said, they were dividing the offices of the church between them.

21. At the close of the interview with Dr. Hobart, did he not declare to you his confidence in your friendly intentions towards him; and did you not take him by the hand and give him your blessing?

22. In the afternoon of the day in which this interview took place, did you not refuse to give Dr. Hobart the statement relative to his conduct towards Mr. Jones, which you had promised to give him in the morning? And did you not allege as a reason for this refusal, that he and Dr. How would employ this statement to your disadvantage?

23. Was it not after this refusal that Dr. Hobart told you that if you would not voluntarily do him justice, he should be obliged, in self-defence, to have recourse to compulsory measures?

24. Did you not after this conversation, state to several of the clergy, and among the rest to Mr. Jones, or to Dr. Moore, or to Dr. Harris, and to several of the members of the vestry, that Dr. Hobart had insulted you? Were not these representations made during Dr. Hobart's absence in the country? After his return had he not two interviews with you at his request, with a view to an explanation? And did he not then press you to make a declaration that you had misunderstood his (Dr. Hobart's) intentions towards you? Was not a form of a declaration to this effect proposed by Mr. Lawrence, your son-in-law, who was present, and accepted as satisfactory by Dr. Hobart, and was it not declined by you?

25. After all attempts to procure a satisfactory explanation from you failed, did not Dr. Hobart wait on you, and was there not at his instance a mutual agreement to bury in oblivion all that was past? Did you not afterwards complain to the rev. Mr. Nash, and in presence of the rev. Mr. Prentice, who had both come down to attend the special convention of Dr. Hobart's treatment of you? Did you not declare to them that you would not sign Dr. Hobart's testimonials for the office of bishop? Had not Mr. King some conversation with you on

the subject of signing this testimonial, and did you not finally sign it?

To the twenty-first, twenty-second, twenty-third, twenty-fourth, and twenty-fifth interrogatories, saith, that generally, for an answer to these five interrogatories, the deponent refers to his answer given to the 28th and 29th direct interrogatories. And the deponent further saith, that he doth not recollect, but that he may, at the time, have expressed an apprehension that Dr. Hobart would employ the statement asked, to the deponent's disadvantage—that Dr. Hobart went out of town directly after the conversation alluded to, and remained there for near a fortnight; and the deponent, during this period, upon being inquired of, did state to several of his acquaintance, and probably to Dr. Moore and others of the clergy, the manner in which he conceived Dr. Hobart had insulted him. That no *form* of a *declaration* was agreed upon, but that Mr. Lawrence proposed, verbally, something, which was not agreed to. That he did not *complain* to Mr. Nash, in the presence of Mr. Prentice, of Dr. Hobart's treatment of him; but he did mention in their presence that though he had agreed to pass over and forgive the treatment he had received, as an individual, yet that the Doctor's unwillingness to acknowledge his error, was an obstacle with the deponent to the signing the testimonial in his favour as bishop; that Mr. King had some conversation with the deponent on this subject; and the deponent did finally sign the testimonial.

26. After the ballots on the election of assistant bishop were counted, did you not declare publicly in the convention, and to Dr. Hobart, that you had no intention of accepting the office of bishop, and reprove those, who had thus brought your name forward?

To the twenty-sixth, saith, that when the ballots were counted after the election, and he found several had voted for him, he did then express his disapprobation of it, as he had publicly desired that he might not be voted for, having determined not to serve in the office.

27. At the interview between you and Mr. How, in which Mr. Jones says, (Solemn Appeal, page 81,) Mr. How treated you ill—was not the subject of the approaching election of an assistant bishop in this diocese introduced by yourself?

To the twenty-seventh, saith, that he doth not recollect which introduced the subject, Mr. How or the deponent.

28. Did not Mr. How expressly say to you, that if he conversed with you on the subject, he must speak with the utmost candour? And did he not express his confidence that

you would receive whatever he should say, in the spirit of respect in which it would be intended?

To the twenty-eighth, saith, that he answers in the affirmative.

29. Mr. Jones asserts that Mr. How said, "although some of the clergy might vote for you, it would yet be out of pity, and not out of respect." Did Mr. How use this language? Was not the address of Mr. How to this effect? "The convention, in my opinion, will not unite in any old man. It would be very disagreeable to you to come into the episcopal office after a strong opposition; it would be still more disagreeable to you to fail; and if the convention should elect you, it will be, not because they will think the thing correct in itself, but because they will not be able to prevail upon themselves to wound your feelings."

To the twenty-ninth, saith, that Mr. How's address to him, was, in substance, as stated in this interrogatory, but delivered in a style or manner extremely offensive to the deponent's feelings.

ABRAHAM BEACH.

Taken and sworn to this 23d July,

1813, before me,

ROBERT BOGGS.

The answers of Isaac Lawrence, Esq. to the interrogatories exhibited to him, and hereto annexed, on the part of the rev. Cave Jones, in a certain arbitration depending between him and the rector and inhabitants of the city of New-York in communion of the Protestant Episcopal Church in the state of New-York.

1. Were not you present at two interviews between the rev. Dr. Beach and Dr. Hobart?
2. What was the object of the first, and by whom was it proposed?
3. State, if you please, the particulars of that interview; and when it took place?
4. What led to the second interview, at which you were present?
5. What took place at this last interview? Please to be as particular, with respect to the different circumstances in each case, as you can recollect?

To the first, second, third, fourth, and fifth interrogatories, saith, that some time in April, 1811, the rev. Mr. Lyell called on Dr. Beach at the request of Dr. Hobart, as he said, who wished, he said, to have an interview with Dr. Beach in the presence of Mr. Lyell, and this deponent; that these four gentlemen met in the evening of the same day, when, instead of any apology from Dr. Hobart for the treatment complained of, and which was expected, he appeared to be much out of humour, that Dr. Beach had mentioned the treatment he had received from Dr. Hobart, and demanded that Dr. Beach should give him something, that would do away the unfavourable impressions made by Dr. Beach's report of that treatment. Dr. Beach told Dr. Hobart repeatedly, that though he never had his feelings so severely wounded as by the language used towards him by Dr. Hobart, still he felt so desirous for the peace of the church, that even without an apology, he would bury all in eternal oblivion; but that Dr. Hobart would not consent to those terms, and insisted that Dr. Beach should say, that he might have misunderstood Dr. Hobart. Dr. Beach said in reply, that it was impossible he could have been mistaken, as the words used by Dr. Hobart had made too deep an impression. Dr. Hobart still insisted as before, with much zeal, but to no purpose; and thus the interview terminated. At the second meeting, on the evening following, when Dr. Bowden attended, nearly the same conversation took place. Dr. Beach showed every disposition for peace; but Dr. Hobart persisted as on the preceding evening. Dr. Hobart then, in an abrupt and violent manner, declared, that he would tell his story, and that Dr. Beach might relate his; and then see who would be believed. Dr. Beach mildly replied, do as you please sir; I shall take no trouble about it. A few days after, Dr. Hobart called at the store of the deponent and said, he wished he had agreed to Dr. Beach's proposal; and if agreeable, would accede to it now. Accordingly the deponent informed Dr. Beach, who immediately accepted the proposal. Dr. Hobart afterwards called, and, in the presence of the deponent, agreed with Dr. Beach to bury all in oblivion.

6. Do you know of any intrigues on the part of Dr. Hobart and Mr. How, in order to get Mr. Berrian settled in Trinity Church, in some subordinate capacity, before an opportunity presented for having him established as an assistant minister? State, if you please, the nature and particulars of those intrigues, and all the parties therein; and any other matters which come within your knowledge, relating to this subject?

7. By what means was it that the intrigues spoken of failed?

8. Are you acquainted with any expressions used concerning bishop Moore in relation to this subject? State them, if you please, and by whom made?

To the sixth, seventh, and eighth interrogatories, the deponent saith, that some time in the summer of 1810, as the deponent believes, bishop Moore and Dr. Beach agreed to join in the employment of an assistant; and Mr. Berrian was proposed to them. Dr. Beach left town, telling bishop Moore to offer what sum he should think right, as a compensation to Mr. Berrian; and that he would pay half. Mr. Berrian declined the offer, the sum proposed being too small, as was understood. A few days afterwards, Dr. Hobart and Mr. How were at the deponent's door, and in speaking of the last mentioned business, seemed much displeased with the offer which bishop Moore had made to Mr. Berrian, especially as the bishop had received a large sum from the church, and was very wealthy. Mr. How then spoke of bishop Moore's extreme attachment to property, and concluded by saying, that he would pay proper respect to the office, but that he despised the man. Doctor Hobart then observed to the deponent, that bishop Moore and Dr. Beach ought each to have given a thousand dollars to Mr. Berrian, and that the vestry should give five hundred dollars in addition. The deponent observed, that in such case it would be placing Mr. Berrian in a better situation than Dr. Beach; and they separated. The deponent understood about this time, that some attempts were making by Mr. How to have the gratuities of bishop Moore and Dr. Beach withheld.

9. Has not the rev. Elias Cooper, one of the attending presbyters at the meeting on the 5th Nov. 1811, at any time, or at different times, expressed his regret to your family, for the part which he acted on that occasion? Mention, if you please, the expressions used as far as you can recollect, together with the reasons assigned for such regret.

To the ninth interrogatory, the deponent saith, that he does not recollect hearing the rev. Mr. Cooper say any thing on the subject.

10. Was not St. George's Church, of which you were a member, in connexion with Trinity Church as a chapel, during the whole of the period when the matters concerning Mr. Jones were transacted? What was the relative attendance of the members of that congregation, at the times of the officiating of Dr. Hobart, Mr. How, or Mr. Jones respectively: that is, did individuals absent themselves only when Mr. Jones officiated, or was the same practised when the

other clergymen officiated respectively; and what were the relative numbers?

11. During part of that period, was not St. George's shut up for the purpose of being cleaned; and did not you then attend at Trinity Church? What was the relative state of that congregation, with regard to the particulars mentioned, and under the circumstances supposed in the last question, as far as your observation could extend?

'To the tenth and eleventh interrogatories, he saith, that he attended St. George's Church until it was shut up to be cleaned, and observed some persons leaving it whenever Mr. Jones, Dr. Hobart, or Mr. How preached; and when the deponent attended at Trinity Church he observed the same.

ISAAC LAWRENCE.

Taken and sworn to this 23d July, 1813, before me,

ROBERT BOGGS.

The answer of the said Isaac Lawrence to cross-interrogatories in the aforesaid case.

1. Were you present at the final interview between Dr. Beach and Dr. Hobart in which the latter sought to explain something that had previously passed between them, and to obtain a declaration from Dr. Beach, that what passed on that occasion had been misunderstood;—did you not at that interview, and after some considerable conversation between Dr. Beach and Dr. Hobart, propose to them a form of a declaration as proper to be signed by Dr. Beach? Was such form deemed satisfactory by Dr. Hobart, and was he willing to accept it? Did Dr. Beach consent to sign it, or decline to do so? And if he did so decline, upon what grounds or reasons.

2. Where is the paper containing the form of the declaration referred to in the preceding interrogatory. If within your possession or power, annex the same or a copy thereof to your deposition in answer to these interrogatories. If not within your possession or power, state particularly and at large, the contents thereof, or if you cannot state such contents, relate the substance of the same as accurately and minutely as your recollection may permit.

To the first and second interrogatories the deponent saith, that he was present at three interviews, and what took place is principally set forth in the first answer. As to any form of declaration, as proper to be signed by Dr. Beach, none was offered; nor was any thing said about a written declaration. The deponent suggested something, which he does not now recollect, merely as the thought of the moment; but which

Dr. Beach rejected immediately; and which the deponent, seeing the impropriety of it, immediately withdrew.

3. What was the conduct and demeanor of Dr. Hobart towards Dr. Beach in the interview above referred to? Was it not mild and respectful, and have you not since had occasion to remark this circumstance to some of his friends?

To the third interrogatory the deponent saith, that Dr Hobart's conduct towards Dr. Beach, as to the two first interviews, was neither mild nor respectful. In the last interview, when he accepted of Dr. Beach's proposal, he was mild and respectful; and this last circumstance the deponent may have mentioned to his friends.

ISAAC LAWRENCE,

Taken and sworn to this 23d July, 1813, before me,
ROBERT BOGGS.

ERRATA.

ERRATA IN MR. OGDEN'S SPEECH.

In page 280, in the fifth line of his speech, after the word *ought* insert *not*.

Page 282, in line 15, for *resist* read *existence*.

Page 288, in the 4th line, read *sit* for *set*.

Page 292, in the 5th line, read *resigned* for *resigning*.

Page 296, in the 6th line from the bottom, read *vitiatur* for *vitiatur*.

Page 297, in the 4th line, for *land* read *lead*.

Page 305, in the 20th line, for *prelate* read *presbyter*.

ERRATA IN MR. WELLS'S SPEECH.

Page 306, in the 5th line of his speech, for *was* read *were*.

Page 307, in the 5th line, for *interest* read *interests*.

Page 308, in the 1st line, for *these* read *those*; and in the 10th line for *his acts are* read *he was*.

Page 310, in the 5th line from the bottom, for *ever* read *even*.

Page 311, in the bottom line, for *this* read *the*.

Page 317, in the 2d line of the 2d paragraph, after the word *ascribe* insert *to*; and in the third line of the same paragraph, instead of *power* read *hands*.

Page 320, in line 10, strike out the word *thus*.

Page 324, in line 11, and line 14, for *churches* read *church*.

Page 325, in line 16, for *satisfy* read *fortify*; and in line 29, strike out the words *name of the*.

Page 328, in the 5th line from the bottom, after the word *by* add *a*.

Page 335, in line 18, after the words *feel that* add *it*; and in line 29, for *bishop* read *bishops*.

Page 340, in line 27, for *ex* read *lex*.

Page 348, in line 24, for *livingly* read *lovingly*; and in line 29, for *come* read *were*.

Page 349, in the 3d line of the 3d paragraph, for *office* read *duty*.

Page 352, in the 9th line of the 3d paragraph, for *where* read *whose*.

Page 353, in the 13th line of the 3d paragraph after the word *permanent* add *a*.

Page 367, in the 3d line, for *disorder* read *discolour*; and in the 13th line for *phantom* read *phantoms*.

Page 375, in the 5th line from the bottom, for *set* read *sit*.

Page 383, in the 2d line from the bottom, for *these* read *three*.

Page 387, in the 2d line, for *probably* read *properly*; and in the 9th line, for *it is* read *they are*.

FEB 26 1954

